



## Filing Receipt

**Received - 2021-07-27 05:04:32 PM**  
**Control Number - 51830**  
**ItemNumber - 12**

The following files are not convertible:

51830 OMCover.dotx

Please see the ZIP file for this Filing on the PUC Interchange in order to access these files.

Contact [centralrecords@puc.texas.gov](mailto:centralrecords@puc.texas.gov) if you have any questions.

# *Public Utility Commission of Texas*

---

## **Commissioner Memorandum**

**TO:** Chairman Peter Lake  
Commissioner Will McAdams  
Commissioner Lori Cobos

**FROM:** David Smeltzer, Rules  
Cliff Crouch, Customer Protection

**DATE:** July 27, 2021

**RE:** July 29, 2021 Open Meeting – Item No. 21  
Project No. 51830 – *Review of Certain Retail Electric Customer Protection Rules.  
(Proposal for Adoption)*

---

Attached for your consideration is a draft proposal for publication of amendments to 16 Texas Administrative Code (TAC) §§25.43, 25.471, 25.475, 25.479, and 25.498; and new §25.499, relating to Acknowledgment of Risk Requirements for Certain Commercial Contracts. These proposed rules will implement an amendment to Texas Utilities Code §17.003(d-1)(c) enacted by the 87<sup>th</sup> Texas Legislature requiring electric utilities and retail electric providers to periodically provide to customers information concerning load shed, type of customers and procedure to be considered for critical care or critical load, and reducing electricity use at times when involuntary load shed events may be implemented. These proposed rules will also prohibit the offering of wholesale indexed products to residential or small commercial customers and require customers other than residential or small commercial customers to sign an acknowledgement of risk prior to enrolling in any indexed products or products that contain a separate assessment for ancillary service charges. Finally, these amendments will pass additional, related customer protections.

This proposal was informed by stakeholder comments filed in response to a discussion draft filed by Commission Staff on June 25, 2021. Commission Staff recommends that the Commission approve this proposal for publication in the Texas Register.

**PROJECT NO. 51830**

**REVIEW OF CERTAIN RETAIL  
ELECTRIC CUSTOMER  
PROTECTION RULES**

§  
§  
§  
§

**PUBLIC UTILITY COMMISSION  
  
OF TEXAS**

**(STAFF RECOMMENDATION)**

**PROPOSAL FOR PUBLICATION OF AMENDMENTS OF 16 TAC §25.43, 25.471,  
25.475, 25.479, and 25.498 and NEW 16 TAC §25.499  
FOR CONSIDERATION AT THE JULY 29, 2021 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes amendments to existing 16 Texas Administrative Code (TAC) §25.43, 25.471, 25.475, 25.479, and 25.498. The commission also proposes new 16 TAC §25.499, relating to Acknowledgement of Risk Requirements for Certain Commercial Contracts. These proposed rules will implement an amendment to Texas Utilities Code §17.003(d-1)(c) enacted by the 87<sup>th</sup> Texas Legislature requiring electric utilities and retail electric providers to periodically provide to customers information concerning load shed, type of customers and procedure to be considered for critical care or critical load, and reducing electricity use at times when involuntary load shed events may be implemented. These proposed rules will also prohibit the offering of wholesale indexed products to residential or small commercial customers and require customers other than residential or small commercial customers to sign an acknowledgement of risk prior to enrolling in any indexed products or products that contain a separate assessment for ancillary service charges. Finally, these amendments will pass additional, related customer protections.

***Growth Impact Statement***



1 The agency provides the following governmental growth impact statement for the proposed  
2 rule, as required by Texas Government Code §2001.0221. The agency has determined that for  
3 each year of the first five years that the proposed rule is in effect, the following statements will  
4 apply:

5 (1) the proposed rule will not create a government program and will not eliminate a government  
6 program;

7 (2) implementation of the proposed rule will not require the creation of new employee positions  
8 and will not require the elimination of existing employee positions;

9 (3) implementation of the proposed rule will not require an increase and will not require a  
10 decrease in future legislative appropriations to the agency;

11 (4) the proposed rule will not require an increase and will not require a decrease in fees paid  
12 to the agency;

13 (5) the proposed rule will create a new regulation to implement PURA § 39.110 as enacted by  
14 the 87<sup>th</sup> Texas Legislature;

15 (6) the proposed rule will not expand, limit, or repeal an existing regulation;

16 (7) the proposed rule will change the number of individuals subject to the rule's applicability  
17 by applying certain minor provisions of §25.475 to brokers and transmission and distribution  
18 utilities ; and

19 (8) the proposed rule will not affect this state's economy.  
20

21 ***Fiscal Impact on Small and Micro-Businesses and Rural Communities***

22 There is no adverse economic effect anticipated for small businesses, micro-businesses, or  
23 rural communities as a result of implementing the proposed rule. Accordingly, no economic  
24 impact statement or regulatory flexibility analysis is required under Texas Government Code  
25 §2006.002(c).  
26

1     ***Takings Impact Analysis***

2     The commission has determined that the proposed rule will not be a taking of private property  
3     as defined in chapter 2007 of the Texas Government Code.

4  
5     ***Fiscal Impact on State and Local Government***

6     Cliff Crouch, Customer Protection Division, has determined that for the first five-year period  
7     the proposed rule is in effect, there will be no fiscal implications for the state or for units of  
8     local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or  
9     administering the sections.

10  
11    ***Public Benefits***

12    Mr. Crouch has also determined that for each year of the first five years the proposed rules and  
13    amendments are in effect, the anticipated public benefits expected as a result of the adoption  
14    of the proposed rules and amendments will be increased customer awareness of potential  
15    impacts to their electric bills, increased customer protections for the products they are enrolling  
16    in, and increased knowledge of availability of critical care and critical load designations. Mr.  
17    Crouch does not believe there will be any major economic costs to persons required to comply  
18    with the rule under Texas Government Code §2001.024(a)(5).

19  
20    ***Local Employment Impact Statement***

21    For each year of the first five years the proposed section is in effect, there should be no effect  
22    on a local economy; therefore, no local employment impact statement is required under Texas  
23    Government Code §2001.022.

1     *Costs to Regulated Persons*

2     Texas Government Code §2001.0045(b) does not apply to this rulemaking because the  
3     commission is expressly excluded under subsection §2001.0045(c)(7).

5     *Public Hearing*

6     The commission staff will conduct a public hearing on this rulemaking on September 14, 2021,  
7     at 9:30 A.M. in the Commissioners' Hearing Room, 7<sup>th</sup> floor, William B. Travis Building if  
8     requested in accordance with Texas Government Code §2001.029. The request for a public  
9     hearing must be received by September 7, 2021. If no request for public hearing is received  
10    and the commission staff cancels the hearing, it will file in this project a notification of the  
11    cancellation of the hearing prior to the scheduled date for the hearing.

13    *Public Comments*

14    Interested persons may file comments electronically through the interchange on the  
15    commission's website. Comments must be filed by **August 27, 2021**. Reply comments must  
16    be filed by **September 7, 2021**. Comments should be organized in a manner consistent with  
17    the organization of the proposed rules. The commission invites specific comments regarding  
18    the costs associated with, and benefits that will be gained by, implementation of the proposed  
19    rule. The commission will consider the costs and benefits in deciding whether to modify the  
20    proposed rules on adoption. **Commission staff strongly encourages commenters to include**  
21    **a bulleted executive summary to assist Commission Staff in reviewing the filed comments**  
22    **in a timely fashion**. All comments should refer to Project Number 51830.

24    *Statutory Authority*

1 These new rules are proposed under the following provision of PURA: §14.001, which  
2 provides the commission the general power to regulate and supervise the business of each  
3 public utility within its jurisdiction and to do anything specifically designated or implied by  
4 PURA that is necessary and convenient to the exercise of that power and jurisdiction; §14.002,  
5 which provides the commission with the authority to make and enforce rules reasonably  
6 required in the exercise of its powers and jurisdiction; §17.003, which requires electric utilities  
7 and retail electric providers to provide clear and uniform information about rates, terms,  
8 services, involuntary load shed procedures, critical designations, and procedures for applying  
9 for critical designations; §17.102, which directs the commission to adopt and enforce rules  
10 requiring that charges on an electric service provider's bill be clearly and easily identified,  
11 §39.101, which requires the commission to ensure that retail customer protections are  
12 established that entitle a customer to safe, reliable, and reasonably priced electricity, and other  
13 protections; §39.106, which requires that the commission designate providers of last resort;  
14 §39.107(g), which prohibits metered electric service being sold to residential customers on a  
15 prepaid basis at a price that is higher than the price charged by the POLR, §39.110, which  
16 prohibits the offering of wholesale indexed products to residential or small commercial  
17 customers and placed conditions on the enrollment of other customers in wholesale indexed  
18 products; §39.112, which requires a REP to provide certain information to a residential  
19 customer who has a fixed rate product.

20  
21 Cross reference to statutes: Public Utility Regulatory Act §§14.001, 14.002, 17.003, 17.102,  
22 39.101, 39.106, 39.107(g), 39.110, and 39.112.

1   **§25.43. Provider of Last Resort (POLR).**

2

3   (a)   **Purpose.** ~~The purpose of this section is to establish~~ This section is to establish the requirements for Provider  
4           of Last Resort (POLR) service and ensures that it is available to any requesting retail  
5           customer and any retail customer who is transferred to another retail electric provider  
6           (REP) by the Electric Reliability Council of Texas (ERCOT) because the customer's  
7           REP failed to provide service to the customer or failed to meet its obligations to the  
8           independent organization.

9

10   (b)   **Application.** The provisions of this section relating to the selection of REPs providing  
11           POLR service apply to all REPs that are serving retail customers in transmission and  
12           distribution utility (TDU) service areas. This section does not apply when an electric  
13           cooperative or a municipally owned utility (MOU) designates a POLR provider for its  
14           certificated service area. However, this section is applicable when an electric  
15           cooperative delegates its authority to the commission in accordance with subsection (r)  
16           of this section to select a POLR provider for the electric cooperative's service area. All  
17           filings made with the commission pursuant to this section, including filings subject to  
18           a claim of confidentiality, ~~shall~~ must be filed with the commission's Filing Clerk in  
19           accordance with the commission's Procedural Rules, Chapter 22, Subchapter E, of this  
20           title (relating to Pleadings and other Documents).

21

22   (c)   **Definitions.** The following ~~words and~~ terms when used in this section ~~shall~~ have the  
23           following meanings, unless the context indicates otherwise:

- 1           (1)    **Affiliate** -- As defined in §25.107 of this title (relating to Certification of Retail  
2                   Electric Providers (REPs).
- 3           (2)    **Basic firm service** -- Electric service that is not subject to interruption for  
4                   economic reasons and that does not include value-added options offered in the  
5                   competitive market. Basic firm service excludes, among other competitively  
6                   offered options, emergency or back-up service, and stand-by service. For  
7                   purposes of this definition, the phrase “interruption for economic reasons” does  
8                   not mean disconnection for non-payment.
- 9           (3)    **Billing cycle** -- A period bounded by a start date and stop date that REPs and  
10                  TDUs use to determine when a customer used electric service.
- 11          (4)    **Billing month** -- Generally a calendar accounting period (approximately 30  
12                  days) for recording revenue, which may or may not coincide with the period a  
13                  customer’s consumption is recorded through the customer’s meter.
- 14          (5)    **Business day** -- As defined by the ERCOT Protocols.
- 15          (6)    **Large non-residential customer** -- A non-residential customer who had a peak  
16                  demand in the previous 12-month period at or above one megawatt (MW).
- 17          (7)    **Large service provider (LSP)** -- A REP that is designated to provide POLR  
18                  service pursuant to subsection (j) of this section.
- 19          (8)    **Market-based product** – A month-to-month product that is either offered to  
20                  or matches the rate of a product offered to non-POLR customers of the REP for  
21                  the same TDU territory and customer class. A month-to-month contract may  
22                  not contain a termination fee or penalty. For purposes of this section, a rate for  
23                  residential customers that is derived by applying a positive or negative

multiplier to the rate described in subsection (m)(2) of this section is not a market-based product.

(9) **Mass transition** -- The transfer of customers as represented by ESI IDs from a REP to one or more POLR providers pursuant to a transaction initiated by the independent organization that carries the mass transition (TS) code or other code designated by the independent organization.

(10) **Medium non-residential customer** -- A non-residential retail customer who had a peak demand in the previous 12-month period of 50 kilowatt (kW) or greater, but less than 1,000 kW.

(11) **POLR area** -- The service area of a TDU in an area where customer choice is in effect.

(12) **POLR provider** -- A volunteer retail electric provider (VREP) or LSP that may be required to provide POLR service pursuant to this section.

(13) **Residential customer** -- A retail customer classified as residential by the applicable TDU tariff or, in the absence of classification under a tariff, a retail customer who purchases electricity for personal, family, or household purposes.

(14) **Transitioned customer** -- A customer as represented by ESI IDs that is served by a POLR provider as a result of a mass transition under this section.

(15) **Small non-residential customer** -- A non-residential retail customer who had a peak demand in the previous 12-month period of less than 50 kW.

(16) **Voluntary retail electric provider (VREP)** -- A REP that has volunteered to provide POLR service pursuant to subsection (i) of this section.

(d) **POLR service.**

- (1) There are two types of POLR providers: VREPs and LSPs.
- (2) For the purpose of POLR service, there are four classes of customers: residential, small non-residential, medium non-residential, and large non-residential.
- (3) A VREP or LSP may be designated to serve any or all of the four customer classes in a POLR area.
- (4) A POLR provider ~~shall~~must offer a basic, standard retail service package to customers it is designated to serve, which ~~shall~~ is limited to:
  - (A) Basic firm service; and
  - (B) Call center facilities available for customer inquiries.
- (5) A POLR provider ~~shall~~must, in accordance with §25.108 of this title (relating to Financial Standards for Retail Electric Providers Regarding the Billing and Collection of Transition Charges), fulfill billing and collection duties for REPs that have defaulted on payments to the servicer of transition bonds or to TDUs.
- (6) Each LSP's customer billing for residential customers taking POLR service under a rate prescribed by subsection (m)(2) of this section ~~shall~~must contain notice to the customer that other competitive products or services may be available from the LSP or another REP. The notice ~~shall~~must also include contact information for the LSP, and the Power to Choose website, and ~~shall~~must include a notice from the commission in the form of a bill insert or a bill message with the header "An Important Message from the Public Utility Commission Regarding Your Electric Service" addressing why the customer has been transitioned to an LSP, a description of the purpose and nature of POLR service, and explaining that more information on competitive markets



can be found at [www.powertochoose.org](http://www.powertochoose.org), or toll-free at 1-866-PWR-4-TEX (1-866-797-4839).

**(e) Standards of service.**

(1) An LSP designated to serve a class in a given POLR area ~~shall~~must serve any eligible customer requesting POLR service or assigned to the LSP pursuant to a mass transition in accordance with the Standard Terms of Service in subsection (f)(1) of this section for the provider customer's class. However, in lieu of providing terms of service to a transitioned customer under subsection (f) of this section and under a rate prescribed by subsection (m)(2) of this section an LSP may at its discretion serve the customer pursuant to a market-based month-to-month product, provided it serves all transitioned customers in the same class and POLR area pursuant to the product.

(2) A POLR provider ~~shall~~must abide by the applicable customer protection rules as provided for under Subchapter R of this chapter (relating to Customer Protection Rules for Retail Electric Service), except that if there is an inconsistency or conflict between this section and Subchapter R of this chapter, the provisions of this section ~~shall~~ apply. However, for the medium non-residential customer class, the customer protection rules as provided for under Subchapter R of this chapter do not apply, except for §25.481 of this title (relating to Unauthorized Charges), §25.485(a)-(b) of this title (relating to Customer Access and Complaint Handling), and §25.495 of this title (relating to Unauthorized Change of Retail Electric Provider).

1 (3) An LSP that has received commission approval to designate one of its affiliates  
2 to provide POLR service on behalf of the LSP pursuant to subsection (k) of this  
3 section ~~shall~~must retain responsibility for the provision of POLR service by the  
4 LSP affiliate and remains liable for violations of applicable laws and  
5 commission rules and all financial obligations of the LSP affiliate associated  
6 with the provisioning of POLR service on its behalf by the LSP affiliate.  
7

8 (f) **Customer information.**

9 (1) The Standard Terms of Service prescribed in subparagraphs (A)-(D) of this  
10 paragraph apply to POLR service provided by an LSP under a rate prescribed  
11 by subsection (m)(2) of this section.

12 (A) Standard Terms of Service, POLR Provider Residential Service:

13 Figure: 16 TAC §25.43(f)(1)(A)

14 (B) Standard Terms of Service, POLR Provider Small Non-Residential  
15 Service:

16 Figure: 16 TAC §25.43(f)(1)(B)

17 (C) Standard Terms of Service, POLR Provider Medium Non-Residential  
18 Service:

19 Figure: 16 TAC §25.43(f)(1)(C)

20 (D) Standard Terms of Service, POLR Provider Large Non-Residential  
21 Service:

22 Figure: 16 TAC §25.43(f)(1)(D)

23 (2) An LSP providing service under a rate prescribed by subsection (m)(2) of this  
24 section ~~shall~~must provide each new customer the applicable Standard Terms of

Service. Such Standard Terms of Service ~~shall~~must be updated as required under §25.475(f) of this title (relating to General Retail Electric Provider Requirements and Information Disclosures to Residential and Small Commercial Customers).

(g) **General description of POLR service provider selection process.**

(1) ~~All~~Each REPs ~~shall~~must provide information to the commission in accordance with subsection (h)(1) of this section. Based on this information, the commission's designated representative will ~~shall~~ designate REPs that are eligible to serve as POLR providers in areas of the state in which customer choice is in effect, except that the commission will ~~shall~~ not designate POLR providers in the service areas of MOUs or electric cooperatives unless an electric cooperative has delegated to the commission its authority to designate the POLR provider, in accordance with subsection (r) of this section.

(2) POLR providers ~~shall~~must serve two-year terms. The initial term for POLR service in areas of the state where retail choice is not in effect as of the effective date of the rule ~~shall~~must be set at the time POLR providers are initially selected in such areas.

(h) **REP eligibility to serve as a POLR provider.** In each even-numbered year, the commission will ~~shall~~ determine the eligibility of certified REPs to serve as POLR providers for a term scheduled to commence in January of the next year.

(1) Each ~~All~~ REPs ~~shall~~must provide information to the commission necessary to establish its ~~their~~ eligibility to serve as a POLR provider for the next term. A

1 REPs ~~shall~~must file, by July 10th, of each even-numbered year, by service area,  
2 information on the classes of customers it provides ~~they provide~~ service to, and  
3 for each customer class, the number of ESI IDs the REP serves and the retail  
4 sales in megawatt-hours for the annual period ending March 31 of the current  
5 year. As part of that filing, a REP may request that the commission designate  
6 one of its affiliates to provide POLR service on its behalf pursuant to subsection  
7 (k) of this section in the event that the REP is designated as an LSP. The  
8 independent organization ~~shall~~must provide to the commission the total number  
9 of ESI ID and total MWh data for each class. Each ~~All~~ REPs ~~shall~~must also  
10 provide information on its ~~their~~ technical capability and financial ability to  
11 provide service to additional customers in a mass transition. The commission's  
12 determination regarding eligibility of a REP to serve as POLR provider under  
13 the provisions of this section will ~~shall~~ not be considered confidential  
14 information.

15 (2) Eligibility to be designated as a POLR provider is specific to each POLR area  
16 and customer class. A REP is eligible to be designated a POLR provider for a  
17 particular customer class in a POLR area, unless:

18 (A) A proceeding to revoke or suspend the REP's certificate is pending at  
19 the commission, the REP's certificate has been suspended or revoked  
20 by the commission, or the REP's certificate is deemed suspended  
21 pursuant to §25.107 of this title (relating to Certification of Retail  
22 Electric Providers (REPs));

1 (B) The sum of the numeric portion of the REP's percentage of ESI IDs  
2 served and percentage of retail sales by MWhs in the POLR area, for  
3 the particular class, is less than 1.0;

4 (C) The commission does not reasonably expect the REP to be able to meet  
5 the criteria set forth in subparagraph (B) of this paragraph during the  
6 entirety of the term;

7 (D) On the date of the commencement of the term, the REP or its  
8 predecessor will not have served customers in Texas for at least 18  
9 months;

10 (E) The REP does not serve the applicable customer class, or does not have  
11 an executed delivery service agreement with the service area TDU;

12 (F) The REP is certificated as an Option 2 REP under §25.107 of this title;

13 (G) The REP's customers are limited to its own affiliates;

14 (H) A REP files an affidavit stating that it does not serve small or medium  
15 non-residential customers, except for the low-usage sites of the REP's  
16 large non-residential customers, or commonly owned or franchised  
17 affiliates of the REP's large non-residential customers and opts out of  
18 eligibility for either, or both of the small or medium non-residential  
19 customer classes; or

20 (I) The REP does not meet minimum financial, technical and managerial  
21 qualifications established by the commission under §25.107 of this title.

22 (3) For each term, the commission will ~~shall~~ publish the names of all ~~of the~~ REPs  
23 eligible to serve as a POLR provider under this section for each customer class  
24 in each POLR area and will ~~shall~~ provide notice to REPs determined to be

1 eligible to serve as a POLR provider. A REP may challenge its eligibility  
2 determination within five business days of the notice of eligibility by filing with  
3 the commission additional documentation that includes the specific data, the  
4 specific calculation, and a specific explanation that clearly illustrate and prove  
5 the REP's assertion. Commission staff will ~~shall~~ verify the additional  
6 documentation and, if accurate, reassess the REP's eligibility. Commission  
7 staff will ~~shall~~ notify the REP of any change in eligibility status within 10  
8 business days of the receipt of the additional documentation. A REP may then  
9 appeal to the commission through a contested case if the REP does not agree  
10 with the staff determination of eligibility. The contested status will not delay  
11 the designation of POLR providers.

12 (4) A standard form may be created by the commission for REPs to use in filing  
13 information concerning their eligibility to serve as a POLR provider.

14 (5) If ERCOT or a TDU has reason to believe that a REP is no longer capable of  
15 performing POLR responsibilities, ERCOT or the TDU ~~shall~~ must make a filing  
16 with the commission detailing the basis for its concerns and ~~shall~~ must provide  
17 a copy of the filing to the REP that is the subject of the filing. If the filing  
18 contains confidential information, ERCOT or the TDU ~~shall~~ must file the  
19 confidential information in accordance with §22.71 of this title (relating to  
20 Filing of Pleadings, Documents, and Other Materials). Commission staff  
21 ~~shall~~ will review the filing, and ~~shall~~ will request that the REP demonstrate that  
22 it still meets the qualifications to provide the service. The commission staff  
23 may initiate a proceeding with the commission to disqualify the REP from  
24 providing POLR service. No ESI IDs ~~shall~~ will be assigned to a POLR provider

1 after the commission staff initiates a proceeding to disqualify the POLR  
2 provider, unless the commission by order confirms the POLR provider's  
3 designation.

4  
5 (i) **VREP list.** Based on the information provided in accordance with this subsection and  
6 subsection (h) of this section, the commission ~~will shall must shall must will~~ post the  
7 names of VREPs on its webpage, including the aggregate customer count offered by  
8 VREPs. A REP may submit a request to be a VREP no earlier than June 1, and no later  
9 than July 31, of each even-numbered year unless otherwise determined by the executive  
10 director. This filing ~~shall must~~ include a description of the REP's capabilities to serve  
11 additional customers as well as the REP's current financial condition in enough detail  
12 to demonstrate that the REP is capable of absorbing a mass transition of customers  
13 without technically or financially distressing the REP and the specific information set  
14 out in this subsection. The commission's determination regarding eligibility of a REP  
15 to serve as a VREP, under the provisions of this section, ~~will shall~~ not be considered  
16 confidential information.

17 (1) A VREP ~~shall must~~ provide to the commission the name of the REP, the  
18 appropriate contact person with current contact information, which customer  
19 classes the REP is willing to serve within each POLR area, and the number of  
20 ESI IDs the REP is willing to serve by customer class and POLR area in each  
21 transition event.

22 (2) A REP that has met the eligibility requirements of subsection (h) of this section  
23 and provided the additional information set out in this subsection is eligible for  
24 designation as a VREP.

1 (3) Commission staff ~~will~~ shall make an initial determination of the REPs that are  
2 to serve as a VREP for each customer class in each POLR area and publish their  
3 names. A REP may challenge its eligibility determination within five business  
4 days of the notice of eligibility by submitting to commission staff additional  
5 evidence of its capability to serve as a VREP. Commission staff will  
6 ~~shall~~ reassess the REP's eligibility and notify the REP of any change in  
7 eligibility status within 10 business days of the receipt of the additional  
8 documentation. A REP may then appeal to the commission through a contested  
9 case if the REP does not agree with the staff determination of eligibility. The  
10 contested status will not delay the designation of VREPs.

11 (4) A VREP may file a request at any time to be removed from the VREP list or to  
12 modify the number of ESI IDs that it is willing to serve as a VREP. If the  
13 request is to increase the number of ESI IDs, it ~~shall~~ must provide information  
14 to demonstrate that it is capable of serving the additional ESI IDs, and the  
15 commission staff ~~shall~~ will make an initial determination, which is subject to an  
16 appeal to the commission, in accordance with the timelines specified in  
17 paragraph (3) of this subsection. If the request is to decrease the number of ESI  
18 IDs, the request ~~shall~~ must be effective five calendar days after the request is  
19 filed with the commission; however, after the request becomes effective the  
20 VREP ~~shall~~ must continue to serve ESI IDs previously acquired through a mass  
21 transition event as well as ESI IDs the VREP acquires from a mass transition  
22 event that occurs during the five-day notice period. If in a mass transition a  
23 VREP is able to acquire more customers than it originally volunteered to serve,  
24 the VREP may work with commission staff and ERCOT to increase its



1 designation. Changes approved by commission staff ~~shall~~will be  
2 communicated to ERCOT and ~~shall~~must be implemented for the current  
3 allocation if possible.

- 4 (5) ERCOT or a TDU may challenge a VREP's eligibility. If ERCOT or a TDU  
5 has reason to believe that a REP is no longer capable of performing VREP  
6 responsibilities, ERCOT or the TDU ~~shall~~must make a filing with the  
7 commission detailing the basis for its concerns and ~~shall~~must provide a copy of  
8 the filing to the REP that is the subject of the filing. If the filing contains  
9 confidential information, ERCOT or the TDU ~~shall~~must file it in accordance  
10 with §25.71 of this title (relating to General Procedures, Requirements and  
11 Penalties). Commission staff will ~~shall~~ review the filing of ERCOT and if  
12 commission staff concludes that the REP should no longer provide VREP  
13 service, it ~~shall~~will request that the REP demonstrate that it still meets the  
14 qualifications to provide the service. The commission staff may initiate a  
15 proceeding with the commission to disqualify the REP from providing VREP  
16 service. No ESI IDs ~~shall~~will be assigned to a VREP after the commission staff  
17 initiates a proceeding to disqualify the VREP, unless the commission by order  
18 confirms the VREP's designation.

19  
20 (j) **LSPs.** This subsection governs the selection and service of REPs as LSPs.

- 21 (1) The REPs eligible to serve as LSPs ~~shall~~must be determined based on the  
22 information provided by REPs in accordance with subsection (h) of this section.  
23 However, for new TDU service areas that are transitioned to competition, the

1 transition to competition plan approved by the commission may govern the  
2 selection of LSPs to serve as POLR providers.

3 (2) In each POLR area, for each customer class, the commission ~~will~~ shall  
4 designate up to 15 LSPs. The eligible REPs that have the greatest market share  
5 based upon retail sales in megawatt-hours, by customer class and POLR area  
6 ~~shall~~ must be designated as LSPs. Commission staff ~~will~~ shall designate the  
7 LSPs by October 15th of each even-numbered year, based upon the data  
8 submitted to the commission under subsection (h) of this section. Designation  
9 as a VREP does not affect a REP's eligibility to also serve as an LSP.

10 (3) For the purpose of calculating the POLR rate for each customer class in each  
11 POLR area, an EFL ~~shall~~ must be completed by the LSP that has the greatest  
12 market share in accordance with paragraph (2) of this subsection. The  
13 Electricity Facts Label (EFL) ~~shall~~ must be supplied to commission staff  
14 electronically for placement on the commission webpage by January 1 of each  
15 year, and more often if there are changes to the non-bypassable charges. Where  
16 REP-specific information is required to be inserted in the EFL, the LSP  
17 supplying the EFL ~~shall~~ must note that such information is REP-specific.

18 (4) An LSP serving transitioned residential and small non-residential customers  
19 under a rate prescribed by subsection (m)(2) of this section ~~shall~~ must move such  
20 customers to a market-based month-to-month product, with pricing for such  
21 product to be effective no later than either the 61st day of service by the LSP or  
22 beginning with the customer's next billing cycle date following the 60th day of  
23 service by the LSP. For each transition event, all such transitioned customers  
24 in the same class and POLR area must be served pursuant to the same product

1 terms, except for those customers specified in subparagraph (B) of this  
2 paragraph.

3 (A) The notice required by §25.475(d) of this title to inform the customers  
4 of the change to a market-based month-to-month product may be  
5 included with the notice required by subsection (t)(3) of this section or  
6 may be provided 14 days in advance of the change. If the §25.475(d)  
7 notice is included with the notice required by subsection (t)(3) of this  
8 section, the LSP may state that either or both the terms of service  
9 document and EFL for the market-based month-to-month product will  
10 ~~shall~~must be provided at a later time, but no later than 14 days before  
11 their effective date.

12 (B) The LSP is not required to transfer to a market-based product any  
13 transitioned customer who is delinquent in payment of any charges for  
14 POLR service to such LSP as of the 60th day of service. If such a  
15 customer becomes current in payments to the LSP, the LSP ~~shall~~must  
16 move the customer to a market-based month-to-month product as  
17 described in this paragraph on the next billing cycle that occurs five  
18 business days after the customer becomes current. If the LSP does not  
19 plan to move customers who are delinquent in payment of any charges  
20 for POLR service as of the 60th day of service to a market-based month-  
21 to-month product, the LSP ~~shall~~must inform the customer of that  
22 potential outcome in the notice provided to comply with §25.475(d) of  
23 this title.

1 (5) Upon a request from an LSP and a showing that the LSP will be unable to  
2 maintain its financial integrity if additional customers are transferred to it under  
3 this section, the commission may relieve an LSP from a transfer of additional  
4 customers. The LSP ~~shall~~must continue providing continuous service until the  
5 commission issues an order relieving it of this responsibility. In the event the  
6 requesting LSP is relieved of its responsibility, the commission staff designee  
7 ~~shall~~will, with 90 days' notice, designate the next eligible REP, if any, as an  
8 LSP, based upon the criteria in this subsection.  
9

10 (k) **Designation of an LSP affiliate to provide POLR service on behalf of an LSP.**

11 (1) An LSP may request the commission designate an LSP affiliate to provide  
12 POLR service on behalf of the LSP either with the LSP's filing under subsection  
13 (h) of this section or as a separate filing in the current term project. The filing  
14 ~~shall~~must be made at least 30 days prior to the date when the LSP affiliate is to  
15 begin providing POLR service on behalf of the LSP. To be eligible to provide  
16 POLR service on behalf of an LSP, the LSP affiliate must be certificated to  
17 provide retail electric service; have an executed delivery service agreement with  
18 the service area TDU; and meet the requirements of subsection (h)(2) of this  
19 section, with the exception of subsection (h)(2)(B), (C), (D), and (E) of this  
20 section as related to serving customers in the applicable customer class.

21 (2) The request ~~shall~~must include the name and certificate number of the LSP  
22 affiliate, information demonstrating the affiliation between the LSP and the  
23 LSP affiliate, and a certified agreement from an officer of the LSP affiliate  
24 stating that the LSP affiliate agrees to provide POLR service on behalf of the

1 LSP. The request ~~shall~~must also include an affidavit from an officer of the LSP  
2 stating that the LSP will be responsible and indemnify any affected parties for  
3 all financial obligations of the LSP affiliate associated with the provisioning of  
4 POLR service on behalf of the LSP in the event that the LSP affiliate defaults  
5 or otherwise does not fulfill such financial obligations.

6 (3) Commission staff will ~~shall~~ make an initial determination of the eligibility of  
7 the LSP affiliate to provide POLR service on behalf of an LSP and publish their  
8 names. The LSP or LSP affiliate may challenge commission staff's eligibility  
9 determination within five business days of the notice of eligibility by submitting  
10 to commission staff additional evidence of its capability to provide POLR  
11 service on behalf of the LSP. Commission staff will ~~shall~~ reassess the LSP  
12 affiliate's eligibility and notify the LSP and LSP affiliate of any change in  
13 eligibility status within 10 business days of the receipt of the additional  
14 documentation. If the LSP or LSP affiliate does not agree with staff's  
15 determination of eligibility, either or both may then appeal the determination to  
16 the commission through a contested case. The LSP ~~shall~~must provide POLR  
17 service during the pendency of the contested case.

18 (4) ERCOT or a TDU may challenge an LSP affiliate's eligibility to provide POLR  
19 service on behalf of an LSP. If ERCOT or a TDU has reason to believe that an  
20 LSP affiliate is not eligible or is not performing POLR responsibilities on behalf  
21 of an LSP, ERCOT or the TDU ~~shall~~must make a filing with the commission  
22 detailing the basis for its concerns and ~~shall~~must provide a copy of the filing to  
23 the LSP and the LSP affiliate that are the subject of the filing. If the filing  
24 contains confidential information, ERCOT or the TDU ~~shall~~must file it in

1 accordance with §25.71 of this title (relating to General Procedures,  
2 Requirements and Penalties). Commission staff will ~~shall~~ review the filing and  
3 if commission staff concludes that the LSP affiliate should not be allowed to  
4 provide POLR service on behalf of the LSP, it will ~~shall~~ request that the LSP  
5 affiliate demonstrate that it has the capability. The commission staff will ~~shall~~  
6 review the LSP affiliate's filing and may initiate a proceeding with the  
7 commission to disqualify the LSP affiliate from providing POLR service. The  
8 LSP affiliate may continue providing POLR service to ESI IDs currently  
9 receiving the service during the pendency of the proceeding; however, the LSP  
10 ~~shall~~ must immediately assume responsibility to provide service under this  
11 section to customers who request POLR service, or are transferred to POLR  
12 service through a mass transition, during the pendency of the proceeding.

13 (5) Designation of an affiliate to provide POLR service on behalf of an LSP  
14 ~~shall~~ must not change the number of ESI IDs served or the retail sales in  
15 megawatt-hours for the LSP for the reporting period nor does such designation  
16 relieve the LSP of its POLR service obligations in the event that the LSP  
17 affiliate fails to provide POLR service in accordance with the commission rules.

18 (6) The designated LSP affiliate ~~shall~~ must provide POLR service and all reports as  
19 required by the commission's rules on behalf of the LSP.

20 (7) The methodology used by a designated LSP affiliate to calculate POLR rates  
21 ~~shall~~ must be consistent with the methodology used to calculate LSP POLR rates  
22 in subsection (m) of this section.

23 (8) If an LSP affiliate designated to provide POLR service on behalf of an LSP  
24 cannot meet or fails to meet the POLR service requirements in applicable laws

and Commission rules, the LSP ~~shall~~must provide POLR service to any ESI IDs currently receiving the service from the LSP affiliate and to ESI IDs in a future mass transition or upon customer request.

- (9) An LSP may elect to reassume provisioning of POLR service from the LSP affiliate by filing a reversion notice with the commission and notifying ERCOT at least 30 days in advance.

- (l) **Mass transition of customers to POLR providers.** The transfer of customers to POLR providers ~~shall~~must be consistent with this subsection.

- (1) ERCOT ~~shall~~must first transfer customers to VREPs, up to the number of ESI IDs that each VREP has offered to serve for each customer class in the POLR area. ERCOT ~~shall~~must use the VREP list to assign ESI IDs to the VREPs in a non-discriminatory manner, before assigning customers to the LSPs. A VREP ~~shall~~must not be assigned more ESI IDs than it has indicated it is willing to serve pursuant to subsection (i) of this section. To ensure non-discriminatory assignment of ESI IDs to the VREPs, ERCOT ~~shall~~must:

- (A) Sort ESI IDs by POLR area;
- (B) Sort ESI IDs by customer class;
- (C) Sort ESI IDs numerically;
- (D) Sort VREPs numerically by randomly generated number; and
- (E) Assign ESI IDs in numerical order to VREPs, in the order determined in subparagraph (D) of this paragraph, in accordance with the number of ESI IDs each VREP indicated a willingness to serve pursuant to subsection (i) of this section. If the number of ESI IDs is less than the

1 total that the VREPs indicated that they are willing to serve, each VREP  
2 ~~shall~~must be assigned a proportionate number of ESI IDs, as calculated  
3 by dividing the number that each VREP indicated it was willing to serve  
4 by the total that all VREPs indicated they were willing to serve,  
5 multiplying the result by the total number of ESI IDs being transferred  
6 to the VREPs, and rounding to a whole number.

7 (2) If the number of ESI IDs exceeds the amount the VREPs are designated to  
8 serve, ERCOT ~~shall~~must assign remaining ESI IDs to LSPs in a non-  
9 discriminatory fashion, in accordance with their percentage of market share  
10 based upon retail sales in megawatt-hours, on a random basis within a class and  
11 POLR area, except that a VREP that is also an LSP that volunteers to serve at  
12 least 1% of its market share for a class of customers in a POLR area ~~shall~~must  
13 be exempt from the LSP allocation up to 1% of the class and POLR area. To  
14 ensure non-discriminatory assignment of ESI IDs to the LSPs, ERCOT  
15 ~~shall~~must:

- 16 (A) Sort the ESI IDs in excess of the allocation to VREPs, by POLR area;
- 17 (B) Sort ESI IDs in excess of the allocation to VREPs, by customer class;
- 18 (C) Sort ESI IDs in excess of the allocation to VREPs, numerically;
- 19 (D) Sort LSPs, except LSPs that volunteered to serve 1% of their market  
20 share as a VREP, numerically by MWs served;
- 21 (E) Assign ESI IDs that represent no more than 1% of the total market for  
22 that POLR area and customer class less the ESI IDs assigned to VREPs  
23 that volunteered to serve at least 1% of their market share for each  
24 POLR area and customer class in numerical order to LSPs designated in



subparagraph (D) of this paragraph, in proportion to the percentage of  
MWhs served by each LSP to the total MWhs served by all LSPs;

(F) Sort LSPs, including any LSPs previously excluded under subparagraph  
(D) of this paragraph; and

(G) Assign all remaining ESI IDs in numerical order to LSPs in proportion  
to the percentage of MWhs served by each LSP to the total MWhs  
served by all LSPs.

(3) Each mass transition ~~shall~~must be treated as a separate event.

(m) **Rates applicable to POLR service.**

(1) A VREP ~~shall~~must provide service to customers using a market-based, month-  
to-month product. The VREP ~~shall~~must use the same market-based, month-to-  
month product for all customers in a mass transition that are in the same class  
and POLR area.

(2) Subparagraphs (A)-(C) of this paragraph establish the maximum rate for POLR  
service charged by an LSP. An LSP may charge a rate less than the maximum  
rate if it charges the lower rate to all customers in a mass transition that are in  
the same class and POLR area.

(A) **Residential customers.** The LSP rate for the residential customer class  
~~shall~~must be determined by the following formula:

$$\text{LSP rate (in \$ per kWh)} = (\text{Non-bypassable charges} + \text{LSP customer charge} + \text{LSP} \\ \text{energy charge}) / \text{kWh used}$$

Where:

1 (i) Non-bypassable charges ~~shall~~must be all TDU charges and  
2 credits for the appropriate customer class in the applicable  
3 service territory and other charges including ERCOT  
4 administrative charges, nodal fees or surcharges, reliability unit  
5 commitment (RUC) capacity short charges attributable to LSP  
6 load, and applicable taxes from various taxing or regulatory  
7 authorities, multiplied by the level of kWh and kW used, where  
8 appropriate.

9 (ii) LSP customer charge ~~shall~~must be \$0.06 per kWh.

10 (iii) LSP energy charge ~~shall~~must be the ~~sum-average of~~the actual  
11 Real-Time Settlement Point Prices (RTSPPs) for the customer's  
12 load zone for the billing period~~hourly average of the previous~~  
13 12-month period ending September 1 of the preceding year's of  
14 ~~the actual hourly Real-Time Settlement Point Prices (RTSPPs)~~  
15 ~~for the customer's load zone that is~~ multiplied by the number of  
16 kWhs the customer used during that ~~hour~~billing period and ~~that~~  
17 ~~is~~ further multiplied by 120%.

18 (iv) ~~"Actual hourly RTSPP" is an hourly rate based on a simple~~  
19 ~~average of the actual interval RTSPPs over the hour.~~

20 ~~(v)~~—"Number of kWhs the customer used" is based ~~either~~ on interval  
21 data ~~or on an allocation of the customer's total actual usage to~~  
22 ~~the hour based on a ratio of the sum of the ERCOT backcasted~~  
23 ~~profile interval usage data for the customer's profile type and~~  
24 ~~weather zone over the hour to the total of the ERCOT backcasted~~

~~profile interval usage data for the customer's profile type and weather zone over the customer's entire billing period.~~

~~(vi) For each billing period, if the sum over the billing period of the actual hourly RTSPP for a customer multiplied by the number of kWhs the customer used during that hour falls below the simple average of the RTSPPs for the load zone located partially or wholly in the customer's TDU service territory that had the highest simple average price over the 12 month period ending September 1 of the preceding year multiplied by the number of kWhs the customer used during the customer's billing period, then the LSP energy charge shallmust be the simple average of the RTSPPs for the load zone partially or wholly in the customer's TDU service territory that had the highest simple average over the 12 month period ending September 1 of the preceding year multiplied by the number of kWhs the customer used during the customer's billing period multiplied by 125%. This methodology shallmust apply until the commission issues an order suspending or modifying the operation of the floor after conducting an investigation.~~

(B) **Small and medium non-residential customers.** The LSP rate for the small and medium non-residential customer classes ~~shall~~must be determined by the following formula:

LSP rate (in \$ per kWh) = (Non-bypassable charges + LSP customer charge + LSP demand charge + LSP energy charge) / kWh used

Where:

- (i) Non-bypassable charges ~~shall~~must be all TDU charges and credits for the appropriate customer class in the applicable service territory, and other charges including ERCOT administrative charges, nodal fees or surcharges, RUC capacity short charges attributable to LSP load, and applicable taxes from various taxing or regulatory authorities, multiplied by the level of kWh and kW used, where appropriate.
- (ii) LSP customer charge ~~shall~~must be \$0.025 per kWh.
- (iii) LSP demand charge ~~shall~~must be \$2.00 per kW, per month, for customers that have a demand meter, and \$50.00 per month for customers that do not have a demand meter.
- (iv) LSP energy charge ~~shall~~must be the ~~sum average of~~ the actual RTSPPs for the customer's load zone for the billing period of the actual hourly previous 12-month period ending September 1 of the preceding year's actual RTSPPs, for the customer's load zone that is multiplied by the number of kWhs the customer used during that billing period hour and that is further multiplied by 125%.
- (v) ~~"Actual hourly RTSPP" is an hourly rate based on a simple average of the actual interval RTSPPs over the hour.~~

1                   ~~(vi) — “Number of kWhs the customer used” is based either on interval~~  
2                   ~~data or on an allocation of the customer’s total actual usage to~~  
3                   ~~the hour based on a ratio of the sum of the ERCOT backcasted~~  
4                   ~~profile interval usage data for the customer’s profile type and~~  
5                   ~~weather zone over the hour to the total of the ERCOT backcasted~~  
6                   ~~profile interval usage data for the customer’s profile type and~~  
7                   ~~weather zone over the customer’s entire billing period.~~

8                   ~~(vii) — For each billing period, if the sum over the billing period of the~~  
9                   ~~actual hourly RTSPP for a customer multiplied by the number~~  
10                  ~~of kWhs the customer used during that hour falls below the~~  
11                  ~~simple average of the RTSPPs for the load zone located partially~~  
12                  ~~or wholly in the customer’s TDU service territory that had the~~  
13                  ~~highest simple average over the 12-month period ending~~  
14                  ~~September 1 of the preceding year multiplied by the number of~~  
15                  ~~kWhs the customer used during the customer’s billing period,~~  
16                  ~~then the LSP energy charge shall must be the simple average of~~  
17                  ~~the RTSPPs for the load zone located partially or wholly in the~~  
18                  ~~customer’s TDU service territory that had the highest simple~~  
19                  ~~average price over the 12-month period ending September 1 of~~  
20                  ~~the preceding year multiplied by the number of kWhs the~~  
21                  ~~customer used during the customer’s billing period multiplied~~  
22                  ~~by 125%. This methodology shall must apply until the~~  
23                  ~~commission issues an order suspending or modifying the~~  
24                  ~~operation of the floor after conducting an investigation.~~

(C) **Large non-residential customers.** The LSP rate for the large non-residential customer class ~~shall~~must be determined by the following formula:

LSP rate (in \$ per kWh) = (Non-bypassable charges + LSP customer charge + LSP demand charge + LSP energy charge) / kWh used

Where:

- (i) Non-bypassable charges ~~shall~~must be all TDU charges and credits for the appropriate customer class in the applicable service territory, and other charges including ERCOT administrative charges, nodal fees or surcharges, RUC capacity short charges attributable to LSP load, and applicable taxes from various taxing or regulatory authorities, multiplied by the level of kWh and KW used, where appropriate.
- (ii) LSP customer charge ~~shall~~must be \$2,897.00 per month.
- (iii) LSP demand charge ~~shall~~must be \$6.00 per kW, per month.
- (iv) LSP energy charge ~~shall~~must be the appropriate RTSPP, determined on the basis of 15-minute intervals, for the customer multiplied by 125%, multiplied by the level of kilowatt-hours used. The energy charge ~~shall~~must have a floor of \$7.25 per MWh.

(3) If in response to a complaint or upon its own investigation, the commission determines that an LSP failed to charge the appropriate rate prescribed by

paragraph (2) of this subsection, and as a result overcharged its customers, the LSP ~~shall~~must issue refunds to the specific customers who were overcharged.

(4) On a showing of good cause, the commission may permit the LSP to adjust the rate prescribed by paragraph (2) of this subsection, if necessary to ensure that the rate is sufficient to allow the LSP to recover its costs of providing service. Notwithstanding any other commission rule to the contrary, such rates may be adjusted on an interim basis for good cause shown and after at least 10 business days' notice and an opportunity for hearing on the request for interim relief. Any adjusted rate ~~shall~~must be applicable to all LSPs charging the rate prescribed by paragraph (2) of this subsection to the specific customer class, within the POLR area that is subject to the adjustment.

(5) For transitioned customers, the customer and demand charges associated with the rate prescribed by paragraph (3) of this subsection ~~shall~~must be pro-rated for partial month usage if a large non-residential customer switches from the LSP to a REP of choice.

(n) **Challenges to customer assignments.** A POLR provider is not obligated to serve a customer within a customer class or a POLR area for which the REP is not designated as a POLR provider, after a successful challenge of the customer assignment. A POLR provider ~~shall~~must use the ERCOT market variance resolution tool to challenge a customer class assignment with the TDU. The TDU ~~shall~~must make the final determination based upon historical usage data and not premise type. If the customer class assignment is changed and a different POLR provider for the customer is

1 determined appropriate, the customer ~~shall~~must then be served by the appropriate  
2 POLR provider. Back dated transactions may be used to correct the POLR assignment.

3  
4 (o) **Limitation on liability.** ~~The~~ A POLR providers ~~shall~~must make reasonable provisions  
5 to provide service under this section to any ESI IDs currently receiving the service and  
6 to ESI IDs obtained in a future mass transition or served upon customer request;  
7 however, liabilities not excused by reason of force majeure or otherwise ~~shall~~must be  
8 limited to direct, actual damages.

9 (1) Neither the customer nor the POLR provider ~~shall~~must be liable to the other for  
10 consequential, incidental, punitive, exemplary, or indirect damages. These  
11 limitations apply without regard to the cause of any liability or damage.

12 (2) In no event will ~~shall~~ ERCOT or a POLR provider be liable for damages to any  
13 REP, whether under tort, contract or any other theory of legal liability, for  
14 transitioning or attempting to transition a customer from such REP to the POLR  
15 provider to carry out this section, or for marketing, offering or providing  
16 competitive retail electric service to a customer taking service under this section  
17 from the POLR provider.

18  
19 (p) **REP obligations in a transition of customers to POLR service.**

20 (1) A customer may initiate service with an LSP by requesting such service at the  
21 rate prescribed by subsection (m)(2) of this section with any LSP that is  
22 designated to serve the requesting customer's customer class within the  
23 requesting customer's service area. An LSP cannot refuse a customer's request



1 to make arrangements for POLR service, except as otherwise permitted under  
2 this title.

3 (2) The POLR provider is responsible for obtaining resources and services needed  
4 to serve a customer once it has been notified that it is serving that customer.  
5 The customer is responsible for charges for service under this section at the rate  
6 in effect at that time.

7 (3) If a REP terminates service to a customer, or transitions a customer to a POLR  
8 provider, the REP is financially responsible for the resources and services used  
9 to serve the customer until it notifies the independent organization of the  
10 termination or transition of the service and the transfer to the POLR provider is  
11 complete.

12 (4) The POLR provider is financially responsible for all costs of providing  
13 electricity to customers from the time the transfer or initiation of service is  
14 complete until such time as the customer ceases taking service under this  
15 section.

16 (5) A defaulting REP whose customers are subject to a mass transition event  
17 ~~shall~~must return the customers' deposits within seven calendar days of the  
18 initiation of the transition.

19 (6) ERCOT ~~shall~~must create a single standard file format and a standard set of  
20 customer billing contact data elements that, in the event of a mass transition,  
21 ~~shall~~must be used by the exiting REP and the POLRs to send and receive  
22 customer billing contact information. The process, as developed by ERCOT  
23 ~~shall~~must be tested on a periodic basis. ~~All REPs~~Each REP ~~shall~~must submit  
24 timely, accurate, and complete files, as required by ERCOT in a mass transition

1 event, as well as for periodic testing. The commission ~~will~~ shall must establish  
2 a procedure for the verification of customer information submitted by REPs to  
3 ERCOT. ERCOT ~~shall~~ must notify the commission if any REP fails to comply  
4 with the reporting requirements in this subsection.

5 (7) When customers are to be transitioned or assigned to a POLR provider, the  
6 POLR provider may request usage and demand data, and customer contact  
7 information including email, telephone number, and address from the  
8 appropriate TDU and from ERCOT, once the transition to the POLR provider  
9 has been initiated. Customer proprietary information provided to a POLR  
10 provider in accordance with this section ~~shall~~ must be treated as confidential and  
11 ~~shall~~ must only be used for mass transition related purposes.

12 (8) Information from the TDU and ERCOT to the POLR providers ~~shall~~ must be  
13 provided in Texas SET format when Texas SET transactions are available.  
14 However, the TDU or ERCOT may supplement the information to the POLR  
15 providers in other formats to expedite the transition. The transfer of information  
16 in accordance with this section ~~shall~~ must not constitute a violation of the  
17 customer protection rules that address confidentiality.

18 (9) A POLR provider may require a deposit from a customer that has been  
19 transitioned to the POLR provider to continue to serve the customer. Despite  
20 the lack of a deposit, the POLR provider is obligated to serve the customer  
21 transitioned or assigned to it, beginning on the service initiation date of the  
22 transition or assignment, and continuing until such time as any disconnection  
23 request is effectuated by the TDU. A POLR provider may make the request for  
24 deposit before it begins serving the customer, but the POLR provider ~~shall~~ must

1 begin providing service to the customer even if the service initiation date is  
2 before it receives the deposit - if any deposit is required. A POLR provider  
3 ~~shall~~must not disconnect the customer until the appropriate time period to  
4 submit the deposit has elapsed. For the large non-residential customer class, a  
5 POLR provider may require a deposit to be provided in three calendar days.  
6 For the residential customer class, the POLR provider may require a deposit to  
7 be provided after 15 calendar days of service if the customer received 10 days'  
8 notice that a deposit was required. For all other customer classes, the POLR  
9 provider may require a deposit to be provided in 10 calendar days. The POLR  
10 provider may waive the deposit requirement at the customer's request if  
11 deposits are waived in a non-discriminatory fashion. If the POLR provider  
12 obtains sufficient data, it ~~shall~~must determine whether a residential customer  
13 has satisfactory credit based on the criteria the POLR provider routinely applies  
14 to its other residential customers. If the customer has satisfactory credit, the  
15 POLR provider ~~shall~~must not request a deposit from the residential customer.

16 (A) At the time of a mass transition, the Executive Director or staff  
17 designated by the Executive Director ~~shall~~will distribute available  
18 proceeds from an irrevocable stand-by letter of credit in accordance with  
19 the priorities established in §25.107(f)(6) of this title. For a REP that  
20 has obtained a current list from the Low Income List Administrator  
21 (LILA) that identifies low-income customers, these funds ~~shall~~must first  
22 be used to provide deposit payment assistance for that REP's  
23 transitioned low-income customers. The Executive Director or staff  
24 designee will, ~~shall~~, at the time of a transition event, determine the

1 reasonable deposit amount up to \$400 per customer ESI ID, unless good  
2 cause exists to increase the level of the reasonable deposit amount above  
3 \$400. Such reasonable deposit amount may take into account factors  
4 such as typical residential usage and current retail residential prices,  
5 and, if fully funded, ~~shall~~must satisfy in full the customers' initial  
6 deposit obligation to the VREP or LSP.

7 (B) For a REP that has obtained a current list from the LILA that identifies  
8 low-income customers, the Executive Director or the staff designee will  
9 ~~shall~~ distribute available proceeds pursuant to §25.107(f)(6) of this title  
10 to the VREPs proportionate to the number of customers they received  
11 in the mass transition, who at the time of the mass transition were  
12 identified as low-income customers by the current LILA list, up to the  
13 reasonable deposit amount set by the Executive Director or staff  
14 designee. If funds remain available after distribution to the VREPs, the  
15 remaining funds ~~shall~~must be distributed to the appropriate LSPs by  
16 dividing the amount remaining by the number of low income customers  
17 as identified in the LILA list that are allocated to LSPs, up to the  
18 reasonable deposit amount set by the Executive Director or staff  
19 designee.

20 (C) If the funds distributed in accordance with §25.107(f)(6) of this title do  
21 not equal the reasonable deposit amount determined, the VREP and LSP  
22 may request from the customer payment of the difference between the  
23 reasonable deposit amount and the amount distributed. Such difference

1                   ~~shall~~must be collected in accordance with §25.478(e)(3) of this title  
2                   (relating to Credit Requirements and Deposits).

3                   (D)   Notwithstanding §25.478(d) of this title, 90 days after the transition  
4                   date, the VREP or LSP may request payment of an amount that results  
5                   in the total deposit held being equal to what the VREP or LSP would  
6                   otherwise have charged a customer in the same customer class and  
7                   service area in accordance with §25.478(e) of this title, at the time of the  
8                   transition.

9                   (10)   On the occurrence of one or more of the following events, ERCOT ~~shall~~must  
10                  initiate a mass transition to POLR providers, of all of the customers served by  
11                  a REP:

12                  (A)   Termination of the Load Serving Entity (LSE) or Qualified Scheduling  
13                  Entity (QSE) Agreement for a REP with ERCOT;

14                  (B)   Issuance of a commission order recognizing that a REP is in default  
15                  under the TDU Tariff for Retail Delivery Service;

16                  (C)   Issuance of a commission order de-certifying a REP;

17                  (D)   Issuance of a commission order requiring a mass transition to POLR  
18                  providers;

19                  (E)   Issuance of a judicial order requiring a mass transition to POLR  
20                  providers; and

21                  (F)   At the request of a REP, for the mass transition of all of that REP's  
22                  customers.

23                  (11)   A REP ~~shall~~must not use the mass transition process in this section as a means  
24                  to cease providing service to some customers, while retaining other customers.

1 A REP's improper use of the mass transition process may lead to de-  
2 certification of the REP.

3 (12) ERCOT may provide procedures for the mass transition process, consistent  
4 with this section.

5 (13) A mass transition under this section ~~shall~~must not override or supersede a  
6 switch request made by a customer to switch an ESI ID to a new REP of choice,  
7 if the request was made before a mass transition is initiated. If a switch request  
8 has been made but is scheduled for any date after the next available switch date,  
9 the switch ~~shall~~must be made on the next available switch date.

10 (14) ERCOT must identify cCustomers who are mass transitioned ~~shall be identified~~  
11 for a period of 60 calendar days. The identification ~~shall~~must terminate at the  
12 first completed switch or at the end of the 60-day period, whichever is first. If  
13 necessary, ERCOT system changes or new transactions ~~shall~~must be  
14 implemented no later than 14 months from the effective date of this section to  
15 communicate that a customer was acquired in a mass transition and is not  
16 charged the out-of-cycle meter read pursuant to paragraph (16) of this  
17 subsection. To the extent possible, the systems changes should be designed to  
18 ensure that the 60-day period following a mass transition, when a customer  
19 switches away from a POLR provider, the switch transaction is processed as an  
20 unprotected, out-of-cycle switch, regardless of how the switch was submitted.

21 (15) In the event of a transition to a POLR provider or away from a POLR provider  
22 to a REP of choice, the switch notification notice detailed in §25.474(1) of this  
23 title (relating to Selection of Retail Electric Provider) is not required.

1 (16) In a mass transition event, the ERCOT initiated transactions ~~shall~~must request  
2 an out-of-cycle meter read for the associated ESI IDs for a date two calendar  
3 days after the calendar date ERCOT initiates such transactions to the TDU. If  
4 an ESI ID does not have the capability to be read in a fashion other than a  
5 physical meter read, the out-of-cycle meter read may be estimated. An  
6 estimated meter read for the purpose of a mass transition to a POLR provider  
7 ~~shall~~must not be considered a break in a series of consecutive months of  
8 estimates, but ~~shall~~must not be considered a month in a series of consecutive  
9 estimates performed by the TDU. A TDU ~~shall~~must create a regulatory asset  
10 for the TDU fees associated with a mass transition of customers to a POLR  
11 provider pursuant to this subsection. Upon review of reasonableness and  
12 necessity, a reasonable level of amortization of such regulatory asset ~~shall~~must  
13 be included as a recoverable cost in the TDU's rates in its next rate case or such  
14 other rate recovery proceeding as deemed necessary. The TDU ~~shall~~must not  
15 bill as a discretionary charge, the costs included in this regulatory asset, which  
16 ~~shall~~must consist of the following:

- 17 (A) fees for out-of-cycle meter reads associated with the mass transition of  
18 customers to a POLR provider; and  
19 (B) fees for the first out-of-cycle meter read provided to a customer who  
20 transfers away from a POLR provider, when the out-of-cycle meter read  
21 is performed within 60 calendar days of the date of the mass transition  
22 and the customer is identified as a transitioned customer.

23 (17) In the event the TDU estimates a meter read for the purpose of a mass transition,  
24 the TDU ~~shall~~must perform a true-up evaluation of each ESI ID after an actual

meter reading is obtained. Within 10 days after the actual meter reading is obtained, the TDU ~~shall~~must calculate the actual average kWh usage per day for the time period from the most previous actual meter reading occurring prior to the estimate for the purpose of a mass transition to the most current actual meter reading occurring after the estimate for the purpose of mass transition. If the average daily estimated usage sent to the exiting REP is more than 50% greater than or less than the average actual kWh usage per day, the TDU ~~shall~~must promptly cancel and re-bill both the exiting REP and the POLR using the average actually daily usage.

**(q) Termination of POLR service provider status.**

- (1) The commission may revoke a REP's POLR status after notice and opportunity for hearing:
  - (A) If the POLR provider fails to maintain REP certification;
  - (B) If the POLR provider fails to provide service in a manner consistent with this section;
  - (C) The POLR provider fails to maintain appropriate financial qualifications; or
  - (D) For other good cause.
- (2) If an LSP defaults or has its status revoked before the end of its term, after a review of the eligibility criteria, the commission staff designee ~~shall~~must~~will~~, as soon as practicable, designate the next eligible REP, if any, as an LSP, based on the criteria in subsection (j) of this section.



1 (3) At the end of the POLR service term, the outgoing LSP ~~shall~~must continue to  
2 serve customers who have not selected another REP.

3  
4 (r) **Electric cooperative delegation of authority.** An electric cooperative that has  
5 adopted customer choice may select to delegate to the commission its authority to select  
6 POLR providers under PURA §41.053(c) in its certificated service area in accordance  
7 with this section. After notice and opportunity for comment, the commission ~~shall~~will,  
8 at its option, accept or reject such delegation of authority. If the commission accepts  
9 the delegation of authority, the following conditions ~~shall~~ apply:

10 (1) The board of directors ~~shall~~must provide the commission with a copy of a board  
11 resolution authorizing such delegation of authority;

12 (2) The delegation of authority ~~shall~~must be made at least 30 calendar days prior to  
13 the time the commission issues a publication of notice of eligibility;

14 (3) The delegation of authority ~~shall~~must be for a minimum period corresponding  
15 to the period for which the solicitation ~~shall~~must be made;

16 (4) The electric cooperative wishing to delegate its authority to designate ~~an~~a  
17 continuous provider ~~shall~~must also provide the commission with the authority  
18 to apply the selection criteria and procedures described in this section in  
19 selecting the POLR providers within the electric cooperative's certificated  
20 service area; and

21 (5) If there are no competitive REPs offering service in the electric cooperative  
22 certificated area, the commission ~~shall~~must automatically reject the delegation  
23 of authority.

1     (s)     **Reporting requirements.** Each LSP that serves customers under a rate prescribed by  
2     subsection (m)(2) of this section ~~shall~~must file the following information with the  
3     commission on a quarterly basis beginning January of each year in a project established  
4     by the commission for the receipt of such information. Each quarterly report ~~shall~~must  
5     be filed within 30 calendar days of the end of the quarter.

6     (1)     For each month of the reporting quarter, each LSP ~~shall~~must report the total  
7     number of new customers acquired by the LSP under this section and the  
8     following information regarding these customers:

9             (A)     The number of customers from whom a deposit was requested pursuant  
10            to the provisions of §25.478 of this title, and the average amount of  
11            deposit requested;

12            (B)     The number of customers from whom a deposit was received, including  
13            those who entered into deferred payment plans for the deposit, and the  
14            average amount of the deposit;

15            (C)     The number of customers whose service was physically disconnected  
16            pursuant to the provisions of §25.483 of this title (relating to  
17            Disconnection of Service) for failure to pay a required deposit; and

18            (D)     Any explanatory data or narrative necessary to account for customers  
19            that were not included in either subparagraph (B) or (C) of this  
20            paragraph.

21     (2)     For each month of the reporting quarter each LSP ~~shall~~must report the total  
22     number of customers to whom a disconnection notice was issued pursuant to  
23     the provisions of §25.483 of this title and the following information regarding  
24     those customers:

1 (A) The number of customers who entered into a deferred payment plan, as  
2 defined by §25.480(j) of this title (relating to Bill Payment and  
3 Adjustments) with the LSP;

4 (B) The number of customers whose service was physically disconnected  
5 pursuant to §25.483 of this title;

6 (C) The average amount owed to the LSP by each disconnected customer at  
7 the time of disconnection; and

8 (D) Any explanatory data or narrative necessary to account for customers  
9 that are not included in either subparagraph (A) or (B) of this paragraph.

10 (3) For the entirety of the reporting quarter, each LSP ~~shall~~must report, for each  
11 customer that received POLR service, the TDU and customer class associated  
12 with the customer's ESI ID, the number of days the customer received POLR  
13 service, and whether the customer is currently the LSP's customer.

14  
15 (t) **Notice of transition to POLR service to customers.** When a customer is moved to  
16 POLR service, the customer ~~shall~~must be provided notice of the transition by ERCOT,  
17 the REP transitioning the customer, and the POLR provider. The ERCOT notice  
18 ~~shall~~must be provided within two days of the time ERCOT and the transitioning REP  
19 know that the customer ~~shall~~must be transitioned and customer contact information is  
20 available. If ERCOT cannot provide notice to customers within two days, it ~~shall~~must  
21 provide notice as soon as practicable. The POLR provider ~~shall~~must provide the notice  
22 required by paragraph (3) of this subsection to commission staff at least 48 hours before  
23 it is provided to customers, and ~~shall~~must provide the notice to transitioning customers

1 as soon as practicable. The POLR provider ~~shall~~must email the notice to the  
2 commission staff members designated for receipt of the notice.

3 (1) ERCOT notice methods ~~shall~~must include a post-card, containing the official  
4 commission seal with language and format approved by the commission.  
5 ERCOT ~~shall~~must notify transitioned customers with an automated phone-call  
6 and email to the extent the information to contact the customer is available  
7 pursuant to subsection (p)(6) of this section. ERCOT ~~shall~~must study the  
8 effectiveness of the notice methods used and report the results to the  
9 commission.

10 (2) Notice by the REP from which the customer is transferred ~~shall~~must include:

11 (A) The reason for the transition;

12 (B) A contact number for the REP;

13 (C) A statement that the customer ~~shall~~must receive a separate notice from  
14 the POLR provider that ~~shall~~must disclose the date the POLR provider  
15 ~~shall~~must begin serving the customer;

16 (D) Either the customer's deposit plus accrued interest, or a statement that  
17 the deposit ~~shall~~must be returned within seven days of the transition;

18 (E) A statement that the customer can leave the assigned service by  
19 choosing a competitive product or service offered by the POLR  
20 provider, or another competitive REP, as well as the following  
21 statement: "If you would like to see offers from different retail electric  
22 providers, please access [www.powertochoose.org](http://www.powertochoose.org), or call toll-free 1-  
23 866-PWR-4-TEX (1-866-797-4839) for a list of providers in your area;"

1 (F) For residential customers, notice from the commission in the form of a  
2 bill insert or a bill message with the header “An Important Message  
3 from the Public Utility Commission Regarding Your Electric Service”  
4 addressing why the customer has been transitioned to another REP, the  
5 continuity of service purpose, the option to choose a different  
6 competitive provider, and information on competitive markets to be  
7 found at [www.powertochoose.org](http://www.powertochoose.org), or toll-free at 1-866-PWR-4-TEX  
8 (1-866-797-4839);

9 (G) If applicable, a description of the activities that the REP ~~shall~~must use  
10 to collect any outstanding payments, including the use of consumer  
11 reporting agencies, debt collection agencies, small claims court, and  
12 other remedies allowed by law, if the customer does not pay or make  
13 acceptable payment arrangements with the REP; and

14 (H) Notice to the customer that after being transitioned to POLR service, the  
15 customer may accelerate a switch to another REP by requesting a special  
16 or out-of-cycle meter read.

17 (3) Notice by the POLR provider ~~shall~~must include:

18 (A) The date the POLR provider began or ~~shall~~must begin serving the  
19 customer and a contact number for the POLR provider;

20 (B) A description of the POLR provider’s rate for service. In the case of a  
21 notice from an LSP that applies the pricing of subsection (m)(2) of this  
22 section, a statement that the price is generally higher than available  
23 competitive prices, that the price is unpredictable, and that the exact rate

1 for each billing period ~~shall~~must not be determined until the time the  
2 bill is prepared;

3 (C) The deposit requirements of the POLR provider and any applicable  
4 deposit waiver provisions and a statement that, if the customer chooses  
5 a different competitive product or service offered by the POLR  
6 provider, a REP affiliated with the POLR provider, or another  
7 competitive REP, a deposit may be required;

8 (D) A statement that the additional competitive products or services may be  
9 available through the POLR provider, a REP affiliated with the POLR  
10 provider, or another competitive REP, as well as the following  
11 statement: "If you would like to choose a different retail electric  
12 provider, please access [www.powertochoose.org](http://www.powertochoose.org), or call toll-free 1-866-  
13 PWR-4-TEX (1-866-797-4839) for a list of providers in your area;"

14 (E) The applicable Terms of Service and Electricity Facts Label (EFL); and

15 (F) For residential customers that are served by an LSP under a rate  
16 prescribed by subsection (m)(2) of this section, a notice to the customer  
17 that after being transitioned to service from a POLR provider, the  
18 customer may accelerate a switch to another REP by requesting a special  
19 or out-of-cycle meter read.

20  
21 (u) **Market notice of transition to POLR service.** ERCOT ~~shall~~must notify all affected  
22 Market Participants and the Retail Market Subcommittee (RMS) email listserv of a  
23 mass transition event within the same day of an initial mass-transition call after the call

1 has taken place. The notification ~~shall~~must include the exiting REP's name, total  
2 number of ESI IDs, and estimated load.

3  
4 (v) **Disconnection by a POLR provider.** The POLR provider must comply with the  
5 applicable customer protection rules as provided for under Subchapter R of this chapter,  
6 except as otherwise stated in this section. To ensure continuity of service, service under  
7 this section ~~shall~~must begin when the customer's transition to the POLR provider is  
8 complete. A customer deposit is not a prerequisite for the initiation of service under  
9 this section. Once service has been initiated, a customer deposit may be required to  
10 prevent disconnection. Disconnection for failure to pay a deposit may not occur until  
11 after the proper notice and after that appropriate payment period detailed in §25.478 of  
12 this title has elapsed, except where otherwise noted in this section.

13  
14 (w) **Deposit payment assistance.**

15 (1) The commission staff designee ~~shall~~will distribute the deposit payment  
16 assistance monies to the appropriate POLRs on behalf of customers as soon as  
17 practicable.

18 (2) The Executive Director or staff designee ~~shall~~will use best efforts to provide  
19 written notice to the appropriate POLRs of the following on or before the  
20 second calendar day after the transition:

21 (A) a list of the ESI IDs identified by the LILA that have been or ~~shall~~must  
22 be transitioned to the applicable POLR (if available); and

1 (B) the amount of deposit payment assistance that ~~shall~~must be provided on  
2 behalf of a POLR customer identified by the LILA (if available).

3 (3) Amounts credited as deposit payment assistance pursuant to this section  
4 ~~shall~~must be refunded to the customer in accordance with §25.478(j) of this  
5 title.  
6



1    **§25.471. General Provisions of Customer Protection Rules.**

2    (a)    **Application.** This subchapter applies to aggregators and retail electric providers  
3           (REPs). In addition, where specifically stated, these rules apply to transmission and  
4           distribution utilities (TDUs), the registration agent, brokers and power generation  
5           companies. These rules specify when certain provisions are applicable only to some,  
6           but not all, of these providers.

7           (1)-(2) No changes.

8           (3)    The rules in this subchapter are minimum, mandatory requirements that must  
9                   be offered to or complied with for all customers unless otherwise specified.  
10           Except for the provisions of §25.495 of this title (relating to Unauthorized  
11           Change of Retail Electric Provider), §25.481 of this title (relating to  
12           Unauthorized Charges), ~~and~~ §25.485(a)-(b) of this title (relating to Customer  
13           Access and Complaint Handling), and §25.499 (relating to Acknowledgement  
14           of Risk Requirements for Certain Commercial Contracts), a customer other  
15           than a residential or small commercial class customer, or a non-residential  
16           customer whose load is part of an aggregation in excess of 50 kilowatts, may  
17           agree to terms of service that reflect either a higher or lower level of customer  
18           protections than would otherwise apply under these rules. Any agreements  
19           containing materially different protections from those specified in these rules  
20           must be reduced to writing and provided to the customer. Additionally, copies  
21           of such agreements must be provided to the commission upon request.

22           (4)-(5) No changes.

23   (b)-(d) No changes.

1    **§25.475. General Retail Electric Provider Requirements and Information Disclosures**  
2                   **to Residential and Small Commercial Customers.**

3    (a)   **Applicability.** The requirements of this section apply to retail electric providers (REPs)  
4           ~~and aggregators, when specifically stated,~~ in connection with the provision of service  
5           and marketing to residential and small commercial customers. ~~This section is effective~~  
6           ~~April 1, 2010. When specifically stated, the requirements of this section apply to~~  
7           ~~brokers, aggregators, and transmission and distribution utilities (TDUs). This section~~  
8           ~~is effective for contracts entered into on or after September 1, 2021.~~ REPs are not  
9           required to modify contract documents related to contracts entered into before this  
10          date, but ~~shall~~must provide notice of expiration as required by subsection (e) of this  
11          section. Contracts entered into prior to September 1, 2021 must comply with the  
12          provisions of this section in effect at the time the contracts were executed.

13   (b)   **Definitions.** The definitions set forth in §25.5 (relating to Definitions) and §25.471(d)  
14           ~~(relating to General Provisions of Customer Protection Rules)~~ of this title apply to this  
15           section. In addition, the following words and terms, when used in this section ~~shall~~  
16           have the following meanings, unless the context indicates otherwise.

17       (1)   **Contract** -- The Terms of Service document (TOS), the Electricity Facts Label  
18           (EFL), Your Rights as a Customer document (YRAC), ~~and~~ the documentation  
19           of enrollment pursuant to §25.474 of this title (relating to Selection of Retail  
20           Electric Provider), and, if applicable, the Acknowledgement of Risk (AOR).

21       (2)   **Contract documents** -- The TOS, EFL ~~and~~, YRAC, and, if applicable, the  
22           AOR.

1           (3)     **Contract expiration** -- The time when the initial term contract is completed.

2                     A new contract is initiated when the customer begins receiving service  
3                     pursuant to the new EFL.

4           (4)     **Contract term** -- The time period the contract is in effect.

5           (5)     **Fixed rate product** -- A retail electric product with a term of at least three

6                     months for which the price (including all recurring charges and ancillary  
7                     service charges) for each billing period of the contract term is the same

8                     throughout the contract term, except that the price may vary from the disclosed

9                     amount solely to reflect actual changes in ~~the Transmission and Distribution~~

10                    ~~Utility (TDU)~~ charges, changes to the Electric Reliability Council of Texas

11                    (ERCOT) or Texas Regional Entity, Inc. administrative fees charged to loads

12                    or changes resulting from federal, state or local laws that impose new or

13                    modified fees or costs on a REP that are beyond the REP's control.

14           (6)     **Indexed product** -- A retail electric product-- for which the price, including

15                     recurring charges, can vary according to a pre-defined pricing formula that is

16                     based on publicly available indices or information and is disclosed to the

17                     customer, and to reflect actual changes in TDU charges, changes to the ERCOT

18                     or Texas Regional Entity administrative fees charged to loads or changes

19                     resulting from federal, state or local laws or regulatory actions that impose new

20                     or modified fees or costs on a REP that are beyond the REPs control. An indexed

21                     product may be for a term of three months or more, or may be a month-to-month

22                     contract.

23           (7)     **Month-to-month contract** -- A contract with a term of 31 days or less. A

24                     month-to-month contract may not contain a termination fee or penalty.

1       (8)     **Price** -- The cost for a retail electric product that includes all recurring charges,  
2             including the cost of ancillary services, excluding state and local sales taxes,  
3             and reimbursement for the state miscellaneous gross receipts tax.

4       (9)     **Recurring charge** -- A charge for a retail electric product that is expected to  
5             appear on a customer's bill in every billing period or appear in three or more  
6             billing periods in a twelve month period. A charge is not considered recurring  
7             if it will be billed by the TDU and passed on to the customer and will either not  
8             be applied to all customers of that class within the TDU territory, or cannot be  
9             known until the customer enrolls or requests a specific service.

10      (10)    **Term contract** -- A contract with a term in excess of 31 days.

11      (11)    **Variable price product** -- A retail product for which price may vary according  
12             to a method determined by the REP, including a product for which the price,  
13             can increase no more than a defined percentage as indexed to the customer's  
14             previous billing month's price. For residential customers, a variable price  
15             product can be only a month-to-month contract.

16      (12)    **Wholesale Indexed Product** - A retail electric product in which the price a  
17             customer pays for electricity includes a direct pass-through of real-time  
18             settlement point prices determined by the independent organization certified  
19             under the Public Utility Regulatory Act (PURA) §39.151 for the ERCOT  
20             power region.

21   (c)     **General Retail Electric Provider requirements.**

22       (1)     **General Disclosure Requirements.**

23           (A)    All written, electronic, and oral communications, including advertising,  
24                 websites,

1 direct marketing materials, billing statements, TOSs, EFLs, YRACs,  
2 and, if applicable, AORs~~YRACs~~ distributed by a REP or aggregator  
3 must~~shall~~ be clear and not misleading, fraudulent, unfair, deceptive, or  
4 anti-competitive. Prohibited communications include, but are not  
5 limited to:

- 6 (i) Using the term or terms “fixed” to market a product that does  
7 not meet the definition of a fixed rate product.
- 8 (ii) Suggesting, implying, or otherwise leading someone to believe  
9 that a REP or aggregator has been providing retail electric  
10 service prior to the time the REP or aggregator was certified or  
11 registered by the commission.
- 12 (iii) Suggesting, implying or otherwise leading someone to believe  
13 that receiving retail electric service from a REP will provide a  
14 customer with better quality of service from the TDU.
- 15 (iv) Falsely suggesting, implying or otherwise leading someone to  
16 believe that a person is a representative of a TDU or any REP  
17 or aggregator.
- 18 (v) Falsely suggesting, implying or otherwise leading someone to  
19 believe that a contract has benefits for a period of time longer than  
20 the initial contract term.

- 21 (B) Written and electronic communications must~~shall~~ not refer to laws,  
22 including commission rules without providing a link or website address  
23 where the text of those rules are available. All printed advertisements,  
24 electronic advertising over the Internet, and websites, must~~shall~~ include

1 the REP's certified name or commission authorized business name, or  
2 the aggregator's registered name, and the number of the certification or  
3 registration.

4 (C) The TOS, EFL, ~~and YRAC~~, and, if applicable, AOR must~~shall~~ be  
5 provided to each customer upon enrollment. Each document must~~shall~~  
6 be provided to the customer whenever a change is made to the specific  
7 document and upon a customer's request, at any time free of charge.

8 (D) A REP must~~shall~~ retain a copy of each version of the TOS, EFL, ~~and~~  
9 YRAC, and, if applicable, AOR during the time the plan is in effect for  
10 a customer and for four years after the contract ceases to be in effect  
11 for any customer. REPs must~~shall~~ provide such documents at the  
12 request of the commission or its staff.

13 (2) **General contracting requirements.**

14 (A) Each A-TOS, EFL, YRAC, and, if applicable, AOR must ~~YRAC shall~~  
15 be complete, ~~shall~~ be written in language that is clear, plain and easily  
16 understood, and ~~shall~~ be printed in paragraphs of no more than 250  
17 words in a font no smaller than 10 point. References to laws including  
18 commission rules in these documents must~~shall~~ include a link or  
19 website internet address to the full text of the applicable law or rule.

20 (B) Each All-contract documents must~~shall~~ be available to the commission  
21 to post on its customer education website (if the REP chooses to post  
22 offers to the website).

23 (C) A contract is limited to service to a customer at a location specified in  
24 the contract. If the customer moves from the location, the customer is

1 under no obligation to continue the contract at another location. The  
2 REP may require a customer to provide evidence that it is moving to  
3 another location. There ~~must~~shall be no early termination fee assessed  
4 to the customer as a result of the customer's relocation if the customer  
5 provides a forwarding address and, if required, reasonable evidence  
6 that the customer no longer occupies the location specified in the  
7 contract.

8 (D) A TOS and EFL ~~must~~shall disclose the type of product being described,  
9 using one of the following terms: fixed rate product, indexed product or  
10 a variable price product.

11 (E) A REP ~~must~~shall not use a credit score, a credit history, or utility  
12 payment data as the basis for determining the price for electric service  
13 for a product with a contract term of 12 months or less for an existing  
14 residential customer or in response to an applicant's request to become  
15 a residential customer.

16 (F) In any dispute between a customer and a REP concerning the terms of  
17 a contract, any vagueness, obscurity, or ambiguity in the contract will  
18 be construed in favor of the customer.

19 (G) For a variable price product, the REP ~~must~~shall disclose on the REP's  
20 website and through a toll-free number the current price and, for  
21 residential customers, one year price history, or history for the life of the  
22 product, if it has been offered less than one year. A REP ~~must~~shall not  
23 rename a product in order to avoid disclosure of price history. The EFL  
24 of a variable price product or indexed product ~~must~~shall include a notice

of how the current price and, if applicable, historical price information may be obtained by a customer.

(H) A REP ~~must~~shall comply with its contracts.

**(3) Specific contract requirements.**

(A) The contract term ~~must~~shall be conspicuously disclosed.

(B) The start and end dates of the contract ~~must~~shall be available to the customer upon request. If the REP cannot determine the start date, the REP may estimate the start date. After the start date is known, the REP ~~must~~shall specify the end date of the contract by:

(i) specifying a calendar date; or

(ii) reference to the first meter read on or after a specific calendar date.

(C) If a REP specifies a calendar date as the end date, the REP may bill the term contract price through the first meter read on or after the end date of the contract.

(D) Each contract for service must include the terms of the default renewal product that the customer will be automatically enrolled in if the customer does not select another retail electric product before the expiration of the contract term after the customer has received all required expiration notices.

(E) If a REP does not provide proper notice of the expiration of a fixed rate contract and the customer does not select another REP before expiration of the contract term, the REP must continue to serve the customer under the pricing terms of the fixed rate product until the REP



1 provides notice in accordance with applicable requirements of  
2 subsection (e)(2)(A)(i) or (ii) or the customer selects another retail  
3 electric product.

4 (F) A REP, aggregator, or broker is prohibited from offering a wholesale  
5 indexed product to a residential or small commercial customer.

6 (G) A REP, aggregator, or broker may enroll a residential or small  
7 commercial customer in an indexed product or a product that contains a  
8 separate assessment of ancillary service charges only if the REP,  
9 aggregator, or broker obtains before the customer's enrollment an AOR  
10 in compliance with the requirements of this section.

11 **(4) Website requirements.**

12 (A) Each REP that offers residential retail electric products for enrollment  
13 on its website ~~must~~shall prominently display the EFL for any products  
14 offered without a person having to enter any personal information other  
15 than zip code and information that allows determination of the type of  
16 offer the consumer wishes to review. Person-specific information  
17 ~~must~~shall not be required.

18 (B) The EFL for each product ~~must~~shall be printable in no more than a two  
19 page format. The EFL, TOS, ~~and~~ YRAC, and, if applicable, AOR for  
20 any products offered for enrollment on the website ~~must~~shall be  
21 available for viewing or downloading.

22 **(d) Changes in contract and price and notice of changes.** A REP may make changes to  
23 the terms and conditions of a contract or to the price of a product as provided for in  
24 this section. Changes in term (length) of a contract require the customer to enter into

a new contract and may not be made by providing the notice described in paragraph (3) of this subsection.

(1) **Contract changes other than price.**

(A) A REP may not change the price (other than as allowed by paragraph (2) of this subsection) or contract term of a term contract for a retail electric product, during its term; but may change any other provision of the contract, with notice under paragraph (3) of this subsection.

(B) A REP may not change the terms and conditions of a month-to-month product, indexed or variable price products, unless it provides notice under paragraph (3) of this subsection.

(2) **Price changes.**

(A) A REP may only change the price of a fixed rate product, an indexed product, or a variable product consistent with the definitions in this section and according to the product's EFL. Such price changes do not require notice under paragraph (3) of this subsection.

(B) For a fixed rate product, each bill ~~must~~shall either show the price changes on one or more separate line items, or ~~must~~shall include a conspicuous notice stating that the amount billed may include price changes allowed by law or regulatory actions.

(C) Each residential bill for a variable price product ~~must~~shall include a statement informing the customer how to obtain information about the price that will apply on the next bill.

(3) **Notice of changes to terms and conditions.** A REP must provide written notice to its customers at least 14 days in advance of the date that the change in the

contract will be applied to the customer's bill or take effect. Notice is not required for a change that benefits the customer.

(4) **Contents of the notice to change terms and conditions.** The notice

must~~shall~~:

- (A) be provided in or with the customer's bill or in a separate document;
- (B) include the following statement, "Important notice regarding changes to your contract" clearly and conspicuously in the notice;
- (C) identify the change and the specific contract provisions that address the change;
- (D) clearly specify what actions the customer needs to take if the customer does not accept the proposed changes to the contract;
- (E) state in bold lettering that if the new terms are not acceptable to the customer, the customer may terminate the contract and no termination penalty may~~shall~~ apply for 14 days from the date that the notice is sent to the customer but may apply if action is taken after the 14 days have expired. No such statement is required if the customer would not be subject to a termination penalty under any circumstances; and
- (F) state in bold lettering that establishing service with another REP may take up to seven business days.

(e) **Contract expiration and renewal offers.** ~~The REP shall~~

**(1) Notice Timeline for Expiration of a Non-Fixed Rate Term Product.**

For term products other than fixed rate products, the REP must send a written notice of contract expiration at least 30 days or one billing cycle prior to the date of contract expiration, but no more than 60 days or two billing cycles in advance

1 of contract expiration for a residential customer, and at least 14 days but no more  
2 than 60 days or two billing cycles in advance of contract expiration for a small  
3 commercial customer. The REP ~~must~~ shall send the notice by mail to a residential  
4 customer or ~~must~~ shall send the required notice to a customer's e-mail address if  
5 available to the REP and if the customer has requested to receive contract-related  
6 notices electronically. The REP ~~must~~ shall send the notice to a small commercial  
7 customer by mail or may send the notice to the customer's e-mail address if  
8 available to the REP and, if the customer has requested to receive contract-related  
9 notices electronically. Nothing in this section ~~precludes~~ shall preclude a REP from  
10 offering a new contract to the customer at any other time during the contract term.

11 **(2) Notice Timeline for Expiration of a Fixed Rate Product.**

12 (A) For fixed rate products, the REP must provide the customer with at least  
13 three written notices of the date the fixed rate product will expire. The  
14 notices must be provided during the last third of the fixed rate contract  
15 period and in intervals that allow for, as practicable, even distribution of  
16 the notices throughout the last third of the fixed rate contract period. For  
17 fixed rate contracts for a period:

18 (i) Of more than four months, the final notice must be provided at  
19 least 30 days before the date the fixed rate contract will expire.

20 (ii) Of four or fewer months, the final notice must be provided at least  
21 15 days before the date the fixed rate contract will expire.

22 (B) The notices must be provided to the customer by mail at the customer's  
23 billing address, unless the customer has opted to receive communications  
24 electronically from the REP.

1 (C) If a REP does not provide the required notice of the expiration of a  
2 customer's fixed rate contract and the customer does not select another  
3 retail electric product before expiration of the fixed rate contract term, the  
4 REP must continue serving the customer under the terms of the fixed rate  
5 contract until sufficient expiration notice is provided or the customer  
6 selects another retail electric product.

7 **(3) Contract Expiration.**

8 (A) If a customer takes no action in response to the final a notice of contract  
9 expiration for the continued receipt of retail electric service upon the  
10 contract's expiration, the REP ~~mustshall~~ serve the customer pursuant to  
11 a default renewal product that is a month-to-month product that the  
12 customer may cancel at any time without a fee. The month-to-month  
13 product price may vary between billing cycles based on clear terms  
14 designed to be easily understood by the average customer.

15 (B) Written notice of contract expiration ~~mustshall~~ be provided in or with  
16 the customer's bill, or in a separate document.

17 (i) If notice is provided with a residential customer's bill, the notice  
18 ~~mustshall~~ be printed on a separate page. A statement ~~mustshall~~  
19 be included in a manner readily visible on the outside of the  
20 envelope sent to a residential customer's billing address by mail  
21 and in the subject line on the e-mail (if the REP sends the notice  
22 by e-mail) that states, "Contract Expiration Notice. See  
23 Enclosed."

1 (ii) If the notice is provided in or with a small commercial  
2 customer's bill, the REP must include a statement in a manner  
3 readily visible on the outside of the billing envelope or in the  
4 subject line of an electronic bill that states, "Contract Expiration  
5 Notice" or "Contract Expiration Notice. See Enclosed."; or

6 (iii) If notice is provided in a separate document, a statement  
7 ~~must~~shall be included in a manner readily visible on the outside  
8 of the envelope and in the subject line of the e-mail (if customer  
9 has agreed to receive official documents by e-mail) that states,  
10 "Contract Expiration Notice. See Enclosed." for residential  
11 customers or for small commercial customers, "Contract  
12 Expiration Notice" ~~or "Contract Expiration Notice. See~~  
13 ~~Enclosed."~~

14 (C) A written notice of contract expiration (whether with the bill or in a  
15 separate envelope) ~~must~~shall set out the following:

16 (i) The date, in boldfaced and underlined text, as provided for in  
17 subsection (c)(3)(B) of this section that the existing contract  
18 will expire.

19 (ii) If the REP provided a calendar date as the end date for the  
20 contract, a statement in bold lettering no smaller than 12 point  
21 font that no termination penalty ~~must~~shall apply to residential  
22 and small commercial customers 14 days prior to the date stated  
23 as the expiration date in the notice. In addition, a description of  
24 any fees or charges associated with the early termination of a

1 residential customer's fixed rate product that would apply  
2 before 14 days prior to the date stated as the expiration date in  
3 the notice must be provided. No such statements are required if  
4 the original contract did not contain a termination fee.

5 (iii) If the REP defined the contract end date by reference to the first  
6 meter read on or after a specific calendar date, a statement in  
7 bold lettering no smaller than 12 point font that no termination  
8 penalty applies to residential customers for 14 days prior to the  
9 date provided as the "on or after" date included in connection  
10 with the first meter read language referenced in the notices~~shall~~  
11 ~~apply to residential customers after receipt of the contract~~  
12 ~~expiration notice~~, or that no termination penalty applies~~shall~~  
13 ~~apply~~ to small commercial customers for 14 days prior to the  
14 contract end date. No such statement is required if the original  
15 contract did not contain a termination fee.

16 (iv) A description of any renewal offers the REP chooses to make  
17 available to the customer and the location of the TOS and EFL  
18 for each of those products and a description of actions the  
19 customer needs to take to continue to receive service from the  
20 REP under the terms of any of the described renewal offers and  
21 the deadline by which actions must be taken.

22 (v) The final notice provided pursuant to subsection (e)(3) must  
23 include a~~A~~ copy of the EFL for the default renewal product if  
24 the customer takes no action; or if the EFL is not included with

1 the contract expiration notice, the REP must provide the EFL to  
2 the customer at least 14 days before the expiration of the  
3 contract using the same delivery method as was used for the  
4 notice. The contract expiration notice must specify how and  
5 when the EFL will be made available to the customer.

6 (vi) A statement that if the customer takes no action, service to the  
7 customer will continue pursuant to the EFL for the default  
8 renewal product that ~~must~~shall be included as part of the notice  
9 of contract expiration. The TOS for the default renewal product  
10 ~~must~~shall be included as part of the notice, unless the TOS  
11 applicable to the customer's existing service also applies to the  
12 default renewal product.

13 (vii) The final notice provided pursuant to subsection (e)(3) must  
14 include a~~A~~ statement that the default service is month-to month  
15 and may be cancelled at any time with no fee.

16 (4) **Affirmative consent.** A customer that is currently receiving service from a  
17 REP may be re-enrolled with the REP for service with the same product under  
18 which the customer is currently receiving service, or a different product, by  
19 conducting an enrollment pursuant to §25.474 of this title or by obtaining the  
20 customer's consent in a recording, electronic document, or written letter of  
21 authorization consistent with the requirements of this subsection. Affirmative  
22 consent is not required when a REP serves the customer under a default renewal  
23 product pursuant to paragraph (1) of this subsection. Each recording, electronic  
24 document, or written consent form must:



- 1 (A) Indicate the customer's name, billing address, service address (for  
2 small commercial  
3 customers, the ESI ID may be used rather than the service address);
- 4 (B) Indicate the identification number of the TOS and EFL under which the  
5 customer will be served;
- 6 (C) Indicate if the customer has received, or when the customer will receive  
7 copies of the TOS, EFL<sub>2</sub>~~and~~ YRAC<sub>2</sub> and, if applicable, AOR;
- 8 (D) Indicate the price(s) which the customer is agreeing to pay;
- 9 (E) Indicate the date or estimated date of the re-enrollment, the contract  
10 term, and the estimated start and end dates of contract term;
- 11 (F) Affirmatively inquire whether the customer has decided to enroll for  
12 service with the product, and contain the customer's affirmative  
13 response; and
- 14 (G) Be entirely in plain, easily understood language, in the language that  
15 the customer has chosen for communications.

16 (f) **Terms of service document.** The following information ~~must~~shall be conspicuously  
17 contained in the TOS:

- 18 (1) **Identity and contact information.** The REP's certified name and business  
19 name (dba) (if applicable), mailing address, e-mail and Internet address (if  
20 applicable), certification number, and a toll-free telephone number (with hours  
21 of operation and time-zone reference).
- 22 (2) **Pricing and payment arrangements.**

- (A) Description of the amount of any routine non-recurring charges resulting from a move-in or switch that may be charged to the customer, including but not limited to an out-of-cycle meter read, and connection or reconnection fees;
- (B) For small commercial customers, a description of the demand charge and how it will be applied, if applicable;
- (C) An itemization, including name and cost, of any non-recurring charges for services that may be imposed on the customer for the retail electric product, including an application fee, charges for default in payment or late payment, and returned checks charges;
- (D) A description of any collection fees or costs that may be assessed to the customer by the REP and that cannot be quantified in the TOS; and
- (E) A description of payment arrangements and bill payment assistance programs offered by the REP.

(3) **Deposits.** If the REP requires deposits from its customers:

- (A) a description of the conditions that will trigger a request for a deposit;
- (B) the maximum amount of the deposit or the manner in which the deposit amount will be determined;
- (C) a statement that interest will be paid on the deposit at the rate approved by the commission, and the conditions under which the customer may obtain a refund of a deposit;
- (D) an explanation of the conditions under which a customer may establish satisfactory credit pursuant to §25.478 of this title (relating to Credit Requirements and Deposits); and

(E) if applicable, the customer's right to post a letter of guarantee in lieu of a deposit pursuant to §25.478(i) of this title.

(4) **Rescission, Termination and Disconnection.**

(A) In a conspicuous and separate paragraph or box:

(i) A description of the right of a customer, for switch requests, to rescind service without fee or penalty of any kind within three federal business days after receiving the TOS, pursuant to §25.474 of this title; and

(ii) Detailed instructions for rescinding service, including the telephone number and, if available, facsimile number or e-mail address that the customer may use to rescind service.

(B) A statement as to how service can be terminated and any penalties that may apply;

(C) A statement of customer's ability to terminate service without penalty if customer moves to another premises and provides evidence that it is moving, if required, and a forwarding address; and

(D) If the REP has disconnection authority, pursuant to §25.483 of this title (relating to Disconnection of Service), a statement that the REP may order disconnection of the customer for non-payment.

(5) **Antidiscrimination.** A statement informing the customer that the REP cannot deny service or require a prepayment or deposit for service based on a customer's race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, level of income, disability, familial status, location of a customer in a economically distressed geographic area, or qualification for

low income or energy efficiency services. For residential customers, a statement informing the customer that the REP cannot use a credit score, a credit history, or utility payment data as the basis for determining the price for electric service for a product with a contract term of 12 months or less.

(6) **Other terms.** Any other material terms and conditions, including exclusions, reservations, limitations of liability, or special equipment requirements, that are a part of the contract for the retail electric product.

(7) **Contract expiration notice.** For a term contract, the TOS ~~must~~shall contain a statement informing the customer that a contract expiration notice will be sent at least 14 days prior to the end of the initial contract term. The TOS ~~must~~shall also state that if the customer fails to take action to ensure the continued receipt of retail electric service upon the contract's expiration, the customer will continue to be served by the REP automatically pursuant to a default renewal product, which ~~must~~shall be a month-to-month product.

(8) A statement describing the conditions under which the contract can change and the notice that will be provided if there is a change.

(9) **Version number.** A REP ~~must~~shall assign an identification number to each version of its TOS, and ~~must~~shall publish the number on the terms of service document.

(g) **Electricity Facts Label.** The EFL ~~must~~shall be unique for each product offered and ~~must~~shall include the information required in this subsection. Nothing in this subsection precludes a REP from charging a price that is less than its EFL would otherwise provide.

1           **(1) Identity and contact information.** The REP's certified name and business  
2           name (dba) (if applicable), mailing address, e-mail and Internet address (if  
3           applicable), certification number, and a toll-free telephone number (with hours  
4           of operation and time-zone reference).

5           **(2) Pricing disclosures.** Pricing information must~~shall~~ be disclosed by a REP in an  
6           EFL. The EFL must~~shall~~ state specifically whether the product is a fixed rate,  
7           variable price or indexed product.

8           (A) For a fixed rate product, the EFL must~~shall~~ provide the total average  
9           price for electric service reflecting all recurring charges, excluding state  
10          and local sales taxes, and reimbursement for the state miscellaneous  
11          gross receipts tax, to the customer.

12          (B) For an indexed product, the EFL must~~shall~~ provide sample prices for  
13          electric service reflecting all recurring charges, excluding state and local  
14          sales taxes, and reimbursement for the state miscellaneous gross receipts  
15          tax, resulting from a reasonable range of values for the inputs to the pre-  
16          defined pricing formula.

17          (C) For a variable price product, the EFL must~~shall~~ provide the total average  
18          price for electric service for the first billing cycle reflecting all recurring  
19          charges, including any TDU charges that may be passed through and  
20          excluding state and local sales taxes, and reimbursement for the state  
21          miscellaneous gross receipts tax, to the customer. Actual changes in  
22          TDU charges, changes to the ERCOT or Texas Regional Entity  
23          administrative fees charge to loads or changes resulting from federal,  
24          state or local laws or regulatory actions that impose new or modified

1 fees or costs on a REP that were not implemented prior to the issuance  
2 of the EFL and were not included in the average price calculation may  
3 be directly passed through to customers beginning with the customer's  
4 first billing cycle.

5 (D) The total average price for electric service must~~shall~~ be expressed in  
6 cents per kilowatt hour, rounded to the nearest one-tenth of one cent for  
7 the following usage levels:

8 (i) For residential customers, 500, 1,000 and 2,000 kilowatt hours  
9 per month; and

10 (ii) For small commercial customers, 1,500, 2,500, and 3,500  
11 kilowatt hours per month. If demand charges apply assume a 30  
12 percent load factor.

13 (E) If a REP combines the charges for retail electric service with charges  
14 for any other product, the REP must~~shall~~:

15 (i) If the electric product is sold separately from the other products,  
16 disclose the total price for electric service separately from other  
17 products; and

18 (ii) If the REP does not permit a customer to purchase the electric  
19 product without purchasing the other products or services, state  
20 the total charges for all products and services as the price of the  
21 total electric service. If the product has a one-time cost up front,  
22 for the purposes of the average price calculation, the cost of the  
23 product may be figured in over a 12-month period with 1/12 of  
24 the cost being attributed to a single month.

1 (F) The following ~~must~~shall be included on the EFL for specific product  
2 types:

3 (i) For indexed products, the formula used to determine an indexed  
4 product, including a website and phone number customers may  
5 contact to determine the current price.

6 (ii) For a variable price product that increases no more than a  
7 defined percentage as indexed to the customer's previous billing  
8 month's price, a notice in bold type no smaller than 12 point  
9 font: "Except for price changes allowed by law or regulatory  
10 action, this price is the price that will be applied during your first  
11 billing cycle; this price may increase by no more than {insert  
12 percentage} percent from month-to-month." For residential  
13 customers, the following additional statement is required:  
14 "Please review the historical price of this product available at  
15 {insert specific website address and toll-free telephone  
16 number}." In the disclosure chart, the box describing whether  
17 the price can change during the contract period ~~must~~shall  
18 include the following statement: "The price applied in the first  
19 billing cycle may be different from the price in this EFL if there  
20 are changes in TDSP charges; changes to the Electric Reliability  
21 Council of Texas or Texas Regional Entity, Inc. administrative  
22 fees charged to loads; or changes resulting from federal, state or  
23 local laws or regulatory actions that impose new or modified  
24 fees or costs that are outside our control."

(iii) For all other variable price products, a notice in bold type no smaller than 12 point font: “Except for price changes allowed by law or regulatory action, this price is the price that will be applied during your first billing cycle; this price may change in subsequent months at the sole discretion of {insert REP name}. In the disclosure chart, the box describing whether the price can change during the contract period ~~must~~shall include the following statement: “The price applied in the first billing cycle may be different from the price in this EFL if there are changes in TDSP charges; changes to the Electric Reliability Council of Texas or Texas Regional Entity administrative fees charged to loads; or changes resulting from federal, state or local laws or regulatory actions that impose new or modified fees or costs that are outside our control.” For residential customers, the following additional statement is required: “Please review the historical price of this product available at {insert specific website address and toll-free telephone number}.”

(3) **Fee Disclosures.**

(A) If customers may be subject to a special charge for underground service or any similar charge that applies only in a part of the TDU service area, the EFL ~~must~~shall include a statement in the electricity price section that some customers will be subject to a special charge that is not included in the total average price for electric service and ~~must~~shall disclose



1                   how the customer can determine the price and applicability of the  
2                   special charge.

3           (B)     A listing of all fees assessed by the REP that may be charged to the  
4                   customer and whether the fee is included in the recurring charges.

5           (4)     **Term Disclosure.** EFL ~~must~~shall include disclosure of the length of term,  
6                   minimum service term, if any, and early termination penalties, if any.

7           (5)     **Renewable Energy Disclosures.** The EFL ~~must~~shall include the percentage of  
8                   renewable energy of the electricity product and the percentage of renewable  
9                   energy of the statewide average generation mix.

10          (6)     **Format of Electricity Facts Label.** REPs must use the following format for  
11                   the EFL with the pricing chart and disclosure chart shown. The additional  
12                   language is for illustrative purposes. It does not include all reporting  
13                   requirements as outlined above. Such subsections should be referred to for  
14                   determination of the required reporting items on the EFL. Each EFL ~~must~~shall  
15                   be printed in type no smaller than ten points in size, unless a different size is  
16                   specified in this section, and ~~must~~shall be formatted as shown in this paragraph:

<b>Electricity Facts Label (EFL)</b>				
{Name of REP}, {Name of Product}, {Service area <i>(if applicable)</i> },				
<b><i>Electricity price</i></b>	Average	500kWh	1,000kWh	2,000kWh
	Average price	{x.x}¢	{x.x}¢	{x.x}¢
	For POLR	{x.x}¢	{x.x}¢	{x.x}¢
	use: Minimum			
	<p>{If applicable} On-peak {season or time}:{xxx}</p> <p>{If applicable} Average on-peak price per kilowatt-hour: {x.x}¢</p> <p>{If applicable} Average off-peak price per kilowatt-hour: {x.x}¢</p> <p>{If applicable} Potential surcharges corresponding to the given electric service.</p> <p>{If variable that does not change within a defined percentage}</p> <p><b>Except for</b></p>			
<b><i>Other Key Terms and</i></b>	<p><i>See Terms of Service statement for a full listing of fees, deposit policy, and other terms</i></p>			

<p><i>Disclosure</i></p> <p><i>Chart</i></p>	Type of Product	(fixed rate indexed or variable)
	Contract Term	(number of months)
	Do I have a termination fee or <del>any fees associated with</del>	(yes/no) (if yes, how much)
	Can my price change during <del>contract period?</del>	(yes/no)
	If my price can change, how will it change, and by how much?	(formula/description of the way the price will vary and how much it can change)  In addition if the REP chooses to pass through regulatory changes the following <del>must</del> <u>shall</u> be
	What other fees may I be	(List, or give direct location in
	Is this a pre-pay or pay in advance product	(yes/no)
	Does the REP purchase excess <del>distributed renewable</del> Renewable Content	(yes/no)  (This product is x%

	The statewide average for renewable content is	(% of statewide average for renewable content)
	Contact info, certification number, version number	

(7) **Version number.** A REP ~~must~~shall assign an identification number to each version of its EFL, and ~~must~~shall publish the number on the EFL.

(h) **Your Rights as a Customer disclosure.** The information set out in this section ~~must~~shall be included in a

REP's "Your Rights as a Customer" document in plain language, to summarize the standard customer protections provided by this subchapter or additional protections provided by the REP.

(1) A YRAC document ~~must~~shall be consistent with the TOS for the retail product.

(2) The YRAC document ~~must~~shall inform the customer of the REP's complaint resolution policy

pursuant to §25.485 of this title (relating to Customer Access and Complaint Handling) and payment arrangements and deferred payment policies pursuant to §25.480 of this title (relating to Bill Payment and Adjustments).

(3) The YRAC document ~~must~~shall inform the customer of the REP's procedures for reporting outages and the steps necessary to have service restored or reconnected after an involuntary suspension or disconnection.

(4) The YRAC must provide information the REP has received from the TDU pursuant to PURA §17.003(e) regarding the TDU's procedures for implementing involuntary load shedding initiated by the independent organization certified under PURA §39.151 for the ERCOT power region, and, if applicable, where any additional details regarding those procedures or relevant updates may be located. The REP may fulfill this requirement by providing a website address with the required information. Each TDU must develop such information and resources by

September 1, 2021 and make the website address where such information can be viewed available to REPs. A REP may provide this information at a website address other than the website addresses made available by the TDUs. A TDU or other entity providing a website address is required to update this information within 30 days of any material change in the information.

(54) The YRAC document ~~must~~shall inform the customer of the customer's right to have the meter tested pursuant to §25.124 of this title (relating to Meter Testing), or in accordance with the tariffs of a transmission and distribution utility, a municipally owned utility, or an electric cooperative, as applicable, and the REP's ability in all cases to make that request on behalf of the customer by a standard electronic market transaction, and the customer's right to be instructed on how to read the meter, if applicable.

(65) The YRAC document ~~must~~shall inform the customer of the availability of:

- (A) Financial and energy assistance programs for residential customers;
- (B) Any special services such as readers or notices in Braille or TTY;
- (C) Special policies or programs available to residential customers ~~with physical disabilities, including residential customers who have a critical need for electric service to maintain life support systems; designated as chronic condition or critical care under §25.497 of this title and the procedure for a customer to apply to be considered for such designations.;~~  
and
- (D) Any available discounts that may be offered by the REP for qualified low-income residential customers. A REP may comply with this requirement by

1 providing the customer with instructions for how to inquire about such  
2 discounts.

3 (76) The YRAC document must~~shall~~ inform the customer of the following customer  
4 rights and protections:

5 (A) Unauthorized switch protections applicable under §25.495 of this title  
6 (relating to Unauthorized Change of Retail Electric Provider);

7 (B) The customer's right to dispute unauthorized charges on the customer's  
8 bill as set forth in §25.481 of this title (relating to Unauthorized Charges);

9 (C) Protections relating to disconnection of service pursuant to §25.483 of this  
10 title;

11 (D) Non-English language requirements pursuant to §25.473 of this title  
12 (relating to Non-English Language Requirements);

13 (E) Availability of a Do Not Call List pursuant to §25.484 of this title (relating  
14 to Electric No-Call List) and §26.37 of this title (relating to Texas No-Call  
15 List); and

16 (F) Privacy rights regarding customer proprietary information as provided by  
17 §25.472 of this title (relating to Privacy of Customer Information).

18 (87) **Identity and contact information.** The REP's certified name and business name  
19 (dba), certification number, mailing address, e-mail and Internet address (if  
20 applicable), and a toll-free telephone number (with hours of operation and time-  
21 zone reference) at which the customer may obtain information concerning the  
22 product.

1 (i) **Advertising claims.** If a REP or aggregator advertises or markets the specific  
2 benefits of a particular electric product, the REP or aggregator ~~must~~shall provide the  
3 name of the electric product offered in the advertising or marketing materials to the  
4 commission or its staff, upon request. All advertisements and marketing materials  
5 distributed by or on behalf of a REP or aggregator ~~must~~shall comply with this  
6 section. REPs and aggregators are responsible for representations to customers and  
7 prospective customers by employees or other agents of the REP concerning retail  
8 electric service that are made through advertising, marketing or other means.

9 (1) **Print advertisements.** Print advertisements and marketing materials, including  
10 direct mail solicitations that make any claims regarding price, savings, or  
11 environmental quality for an electricity product of the REP compared to a product  
12 offered by another REP ~~must~~shall include the EFL of the REP making the claim.  
13 In lieu of including an EFL, the following statement ~~must~~shall be provided: “You  
14 can obtain important standardized information that will allow you to compare this  
15 product with other offers. Contact (name, telephone number, and Internet address  
16 (if available) of the REP).” If the REPs phone number or website address is  
17 included on the advertisement, such phone number or website address is not  
18 required in the disclaimer statement. Upon request, a REP ~~must~~shall provide to the  
19 commission the contract documents relating to a product being advertised and any  
20 information used to develop or substantiate comparisons made in the  
21 advertisement.

22 (2) **Television, radio, and internet advertisements.** A REP ~~must~~shall include the  
23 following statement in any television, Internet, or radio advertisement that makes a



specific claim about price, savings, or environmental quality for an electricity product of the REP compared to a product offered by another REP: “You can obtain important standardized information that will allow you to compare this product with other offers. Contact (name, telephone number and website (if available) of the REP).” If the REPs phone number or website address is included on the advertisement, such phone number or website address is not required in the disclaimer statement. This statement is not required for general statements regarding savings or environmental quality, but ~~must~~shall be provided if a specific price is included in the advertisement, or if a specific statement about savings or environmental quality compared to another REP is made. Upon request, a REP ~~must~~shall provide to the commission the contract documents relating to a product being advertised and any information used to develop or substantiate comparisons made in the advertisement.

(3) **Outdoor advertisements.** A REP ~~must~~shall include, in a font size and format that is legible to the intended audience, its certified name or commission authorized business name, certification number, telephone number and Internet address (if available).

(4) **Renewable energy claims.** A REP ~~must~~shall authenticate its sales of renewable energy in accordance with §25.476 of this title (relating to Renewable and Green Energy Verification). If a REP relies on supply contracts to authenticate its sales of renewable energy, it ~~must~~shall file a report with the commission, not later than March 15 of each year demonstrating its compliance with this paragraph and §25.476 of this title.

1 (j) **Acknowledgement of Risk.** Before a residential or small commercial customer's  
2 enrollment in an indexed product or a product that contains a separate assessment of  
3 ancillary service charges, an aggregator, broker, or retail electric provider must obtain an  
4 AOR, signed by the customer, verifying that the customer accepts the potential price risks  
5 associated with the product.

6 (1) for indexed products other than wholesale indexed products the AOR must include  
7 the following statement in clear, boldfaced text: "This is an indexed product. I  
8 understand that if I enroll in this product, the rate I will be charged for electricity  
9 can change for reasons beyond my control. These changes may result in  
10 unexpectedly high bills, potentially significantly higher than previous bills, and I  
11 must pay any amount I am properly billed. I understand the risks involved with  
12 this plan.

13 (3) for products that contain a separate assessment of ancillary service charges the  
14 AOR must include the following statement in clear, boldfaced text: "This product  
15 contains a separate assessment of ancillary service charges. I understand that if I  
16 enroll in this product, the rate I will be charged for electricity can change for  
17 reasons beyond my control. These changes may result in unexpectedly high bills,  
18 potentially significantly higher than previous bills, and I must pay any amount I  
19 am properly billed. I understand the risks involved with this plan."

1   **§25.479. Issuance and Format of Bills.**

2   (a)   **Application.** This section applies, ~~beginning April 1, 2010,~~ to a retail electric provider  
3       (REP) that is responsible for issuing electric service bills to retail customers, unless the  
4       REP is issuing a consolidated bill (both energy services and transmission and distribution  
5       services) on behalf of an electric cooperative or municipally owned utility. This section  
6       does not apply to a municipally owned utility or electric cooperative issuing bills to its  
7       customers in its own service territory.

8   (b)   **Frequency and delivery of bills.**

9       (1)   A REP ~~must~~shall issue a bill monthly to each customer, unless service is provided  
10       for a period of less than one month. A REP may issue a bill less frequently than  
11       monthly if both the customer and the REP agree to such an arrangement.

12       (2)   A bill ~~Bills must~~shall be issued no later than 30 days after the REP receives the  
13       usage data and any related invoices for non-bypassable charges, unless validation  
14       of the usage data and invoice received from a transmission and distribution utility  
15       by the REP or other efforts to determine the accuracy of usage data or invoices  
16       delay billing by a REP past 30 days. The number of days to issue a bill ~~must~~shall  
17       be extended beyond 30 days to the extent necessary to support agreements  
18       between REPs and customers for less frequent billing, as provided in paragraph  
19       (1) of this subsection or for consolidated billing.

20       (3)   A REP ~~must~~shall issue bills to residential customers in writing and delivered via  
21       the United States Postal Service. REPs may provide bills to a customer  
22       electronically in lieu of written mailings if both the customer and the REP agree  
23       to such an arrangement. An affiliated REP or a provider of last resort ~~must~~shall

not require a customer to agree to such an arrangement as a condition of receiving electric service.

- (4) A REP ~~must~~shall not charge a customer a fee for issuing a standard bill, which is a bill delivered via U.S. mail that complies with the requirements of this section. The customer may be charged a fee or given a discount for non-standard billing in accordance with the terms of service document.

(c) **Bill content.**

- (1) Each customer's bill ~~must~~shall include the following information:

- (A) The certified name and address of the REP and the number of the license issued to the REP by the commission;
- (B) A toll-free telephone number, in bold-face type, which the customer can call during specified hours for inquiries and to make complaints to the REP about the bill;
- (C) A toll-free telephone number that the customer may call 24 hours a day, seven days a week, to report power outages and concerns about the safety of the electric power system;
- (D) The service address, electric service identifier (ESI), and account number of the customer;
- (E) The service period for which the bill is rendered;
- (F) The date on which the bill was issued;
- (G) The payment due date of the bill and, if different, the date by which payment from the customer must be received by the REP to avoid a late charge or other collection action;

(H) The current charges for electric service as disclosed in the customer's terms of service document, including applicable taxes and fees labeled "current charges." If the customer is on a level or average payment plan, the level or average payment due ~~must~~shall be clearly shown in addition to the current charges;

(I) A calculation of the average unit price for electric service for the current billing period, labeled, "The average price you paid for electric service this month." The calculation of the average price for electric service ~~must~~shall reflect the total of all fixed and variable recurring charges, but not include state and local sales taxes, reimbursement for the state miscellaneous gross receipts tax, and any nonrecurring charges or credits, divided by the kilowatt-hour consumption, and ~~must~~shall be expressed as a cents per kilowatt-hour amount rounded to the nearest one-tenth of one cent.

(J) The identification and itemization of charges other than for electric service as disclosed in the customer's terms of service document;

(K) The itemization and amount of any non-recurring charge, including late fees, returned check fees, restoration of service fees, or other fees disclosed in the REP's terms of service document provided to the customer;

(L) The balances from the preceding bill, payments made by the customer since the preceding bill, and the amount the customer is required to pay by the due date, labeled "amount due;"

- 1 (M) A notice that the customer has the opportunity to voluntarily donate money  
2 to the bill payment assistance program, pursuant to §25.480(g)(2) of this  
3 title ( relating to Bill Payment and Adjustments);
- 4 (N) If available to the REP on a standard electronic transaction, if the bill is  
5 based on kilowatt-hour (kWh) usage, the following information:
- 6 (i) the meter reading at the beginning of the period for which the  
7 customer is being billed, labeled “previous meter read,” and the  
8 meter reading at the end of the period for which the customer is  
9 being billed, labeled “current meter read,” and the dates of such  
10 readings;
- 11 (ii) the kind and number of units measured, including kWh, actual  
12 kilowatts (kW), or kilovolt ampere (kVa);
- 13 (iii) if applicable, billed kW or kVa;
- 14 (iv) whether the bill was issued based on estimated usage; and
- 15 (v) any conversions from meter reading units to billing units, or any  
16 other calculations to determine billing units from recording or other  
17 devices, or any other factors used in determining the bill, unless the  
18 customer is provided conversion charts;
- 19 (O) Any amount owed under a written guarantee agreement, provided the  
20 guarantor was previously notified in writing by the REP of an obligation on  
21 a guarantee as required by §25.478 of this title (relating to Credit  
22 Requirements and Deposits);

(P) A conspicuous notice of any services or products being provided to the customer that have been added since the previous bill;

(Q) Notification of any changes in the customer's prices or charges due to the operation of a variable rate feature previously disclosed by the REP in the customer's terms of service document;

(R) The notice required by §25.481(d) of this title (relating to Unauthorized Charges); and

(S) For residential customers, on the first page of the bill in at least 12-point font the phrase, "for more information about residential electric service please visit [www.powertochoose.com](http://www.powertochoose.com)."

(2) If a REP separately identifies a charge defined by one of the terms in this paragraph on the customer's bill, then the term in this paragraph must be used to identify that charge, and such term and its definition ~~must~~<sup>shall</sup> be easily located on the REP's website and available to a customer free of charge upon request. Nothing in this paragraph precludes a REP from aggregating transmission and distribution utility (TDU) or REP charges. For any TDU charge(s) listed in this paragraph, the amount billed by the REP ~~must~~<sup>shall</sup> not exceed the amount of the TDU tariff charge(s). The label for any TDU charge(s) may also identify the TDU that issued the charge(s). A REP may use a different term than a defined term by adding or deleting a suffix, by adding the word "total" to a defined term, where appropriate, changing the use of lowercase or capital letters or punctuation, or using the acceptable abbreviation specified in this paragraph for a defined term. If an abbreviation other than the

1 acceptable abbreviation is used for the term, then the term must also be identified  
2 on the customer's bill.

3 (A) Advanced metering charge -- A charge assessed to recover a TDU's charges  
4 for Advanced Metering Systems, to the extent that they are not recovered in  
5 a TDU's standard metering charge. Acceptable abbreviation: Advanced  
6 Meter.

7 (B) Competition Transition Charge -- A charge assessed to recover a TDU's  
8 charges for nonsecuritized costs associated with the transition to  
9 competition. Acceptable abbreviation: Competition Transition.

10 (C) Energy Efficiency Cost Recovery Factor -- A charge assessed to recover a  
11 TDU's costs for energy efficiency programs, to the extent that the TDU  
12 charge is a separate charge exclusively for that purpose that is approved by  
13 the Public Utility Commission. Acceptable abbreviation: Energy  
14 Efficiency.

15 (D) Late Payment Penalty -- A charge assessed for late payment in accordance  
16 with Public Utility Commission rules.

17 (E) Meter Charge -- A charge assessed to recover a TDU's charges for metering  
18 a customer's consumption, to the extent that the TDU charge is a separate  
19 charge exclusively for that purpose that is approved by the Public Utility  
20 Commission.

21 (F) Miscellaneous Gross Receipts Tax Reimbursement -- A fee assessed to  
22 recover the miscellaneous gross receipts tax imposed on retail electric



providers operating in an incorporated city or town having a population of more than 1,000. Acceptable abbreviation: Gross Receipts Reimb.

(G) Nuclear Decommissioning Fee -- A charge assessed to recover a TDU's charges for decommissioning of nuclear generating sites. Acceptable abbreviation: Nuclear Decommission.

(H) PUC Assessment -- A fee assessed to recover the statutory fee for administering the Public Utility Regulatory Act.

(I) Sales tax -- Sales tax collected by authorized taxing authorities, such as the state, cities and special purpose districts.

(J) TDU Delivery Charges -- The total amounts assessed by a TDU for the delivery of electricity to a customer over poles and wires and other TDU facilities not including discretionary charges.

(K) Transmission Distribution Surcharges -- One or more TDU surcharge(s) on a customer's bill in any combination. Surcharges include charges billed as tariff riders by the TDU. Acceptable abbreviation: TDU Surcharges.

(L) Transition Charge -- A charge assessed to recover a TDU's charges for securitized costs associated with the transition to competition.

(3) If the REP includes any of the following terms in its bills, the term must~~shall~~ be applied in a manner consistent with the definitions, and such term and its definition must~~shall~~ be easily located on the REP's website and available to a customer free of charge upon request:

(A) Base Charge -- A charge assessed during each billing cycle without regard to the customer's demand or energy consumption.

(B) Demand Charge -- A charge based on the rate at which electric energy is delivered to or by a system at a given instant, or averaged over a designated period, during the billing cycle.

(C) Energy Charge -- A charge based on the electric energy (kWh) consumed.

(4) A REP ~~must~~shall provide an itemization of charges, including non-bypassable charges, to the customer upon the customer's request and, to the extent that the charges are consistent with the terms set out in paragraph (2), of this subsection, the terms ~~must~~shall be used in the itemization.

(5) A customer's electric bill ~~must~~shall not contain charges for electric service from a service provider other than the customer's designated REP.

(6) A REP ~~must~~shall include on each residential and small commercial billing statement, in boldfaced and underlined type, the date, as provided for in §25.475(c)(3)(B) of this title (relating to General Retail Electric Provider Requirements and Information Disclosure to Residential and Small Commercial Customers) that a fixed rate product will expire.

(7) To the extent that a REP uses the concepts identified in this paragraph in a customer's bill, it ~~must~~shall use the term set out in this paragraph, and the definitions in this paragraph ~~must~~shall be easily located on the REP's website. A REP may not use a different term for a concept that is defined in this paragraph.

(A) kW -- Kilowatt, the standard unit for measuring electricity demand, equal to 1,000 watts;

(B) kWh -- Kilowatt-hour, the standard unit for measuring electricity energy consumption, equal to 1,000 watt-hours; and

(8) Notice of contract expiration may be provided in a bill in accordance with §25.475 of this title.

(d) **Public service notices.** A REP ~~must~~shall, as required by the commission after reasonable notice, provide brief public service notices to its customers. The REP ~~must~~shall provide these public service notices to its customers on its billing statements, as a separate document issued with its bill, by electronic communication, or by other acceptable mass communication methods, as approved by the commission. Additionally, in April and October of each year, or as otherwise directed by the commission, the REP must~~shall~~provide information to each customer along with the customer's bill about:

(1) The electric utility's procedures for implementing involuntary load shedding initiated by the independent organization certified for the ERCOT power region under PURA §39.151;

(2) The types of customers who may be considered critical care residential customers, critical load industrial customers, or critical load according to commission rules adopted under PURA §38.076;

(3) The procedure for a customer to apply to be considered a critical care customer, a critical load industrial customer, or critical load according to commission rules adopted under PURA §38.076; and

(4) Reducing electricity use at times when involuntary load shedding events may be implemented.

(e) **Estimated bills.** If a REP is unable to issue a bill based on actual meter reading due to the failure of the TDU, the registration agent, municipally owned utility or electric cooperative

1 to obtain or transmit a meter reading or an invoice for non-bypassable charges to the REP  
2 on a timely basis, the REP may issue a bill based on the customer's estimated usage and  
3 inform the customer of the reason for the issuance of the estimated bill.

4 **(f) Non-recurring charges.** A REP may pass through to its customers all applicable non-  
5 recurring charges billed to the REP by a TDU, municipally owned utility, or electric  
6 cooperative as a result of establishing, switching, disconnecting, reconnecting, or  
7 maintaining service to an applicant or customer. In the event of a meter test, the TDU,  
8 municipally owned utility, electric cooperative, and REP ~~must~~shall comply with the  
9 requirements of §25.124 of this title (relating to Meter Testing) or with the requirements  
10 of the tariffs of a TDU, municipally owned utility, or electric cooperative, as applicable.  
11 The TDU, municipally owned utility, or electric cooperative ~~must~~shall maintain a record  
12 of all meter tests performed at the request of a REP or a REP's customers.

13 **(g) Record retention.** A REP ~~must~~shall maintain monthly billing and payment records for  
14 each account for at least 24 months after the date the bill is mailed. The billing records  
15 ~~must~~shall contain sufficient data to reconstruct a customer's billing for a given period. A  
16 copy of a customer's billing records may be obtained by that customer on request, and may  
17 be obtained once per 12-month period, at no charge.

18 **(h) Transfer of delinquent balances or credits.** If the customer has an outstanding balance or  
19 credit owed to the customer's current REP that is due from a previous account in the same  
20 customer class, then the customer's current REP may transfer that balance to the customer's  
21 current account. The delinquent balance and specific account or address ~~must~~shall be

1 identified as such on the bill. There ~~must~~<sup>shall</sup> be no balance transfers between REPs, other  
2 than transfer of a deposit, as specified in §25.478(j)(2) of this title.

3

1    **§25.498. Prepaid Service.**

2

3    (a)    **Applicability.** This section applies to retail electric providers (REPs) that offer a payment  
4           option in which a customer pays for retail service prior to the delivery of service and to  
5           transmission and distribution utilities (TDUs) that have installed advanced meters and  
6           related systems. A REP may not offer prepaid service to residential or small commercial  
7           customers unless it complies with this section. The following provisions do not apply to  
8           prepaid service, unless otherwise expressly stated:

9           (1)    §25.479 of this title (relating to Issuance and Format of Bills);

10          (2)    §25.480(b), (e)(3), (h), (i), (j), and (k) of this title (relating to Bill Payment and  
11           Adjustments); and

12          (3)    §25.483 of this title (relating to Disconnection of Service), except for  
13           §25.483(b)(2)(A) and (B), (d), and (e)(1)-(6) of this title.

14

15   (b)    **Definitions.** The following terms, when used in this section, have the following meanings  
16           unless the context indicates otherwise.

17          (1)    **Connection balance** -- A current balance, not to exceed \$75 for a residential  
18           customer, required to establish prepaid service or reconnect prepaid service  
19           following disconnection.

20          (2)    **Current balance** -- An account balance calculated consistent with subsection  
21           (c)(6) of this section.

22          (3)    **Customer prepayment device or system (CPDS)** -- A device or system that  
23           includes metering and communications capabilities that meet the requirements of

1 this section, including a device or system that accesses customer consumption  
2 information from a TDU's advanced metering system (AMS). The CPDS may be  
3 owned by the REP, and installed by the TDU consistent with subsection (c)(2)-(4)  
4 of this section.

5 (4) **Disconnection balance** -- An account balance, not to exceed \$10 for a residential  
6 customer, below which the REP may initiate disconnection of the customer's  
7 service.

8 (5) **Landlord** -- A landlord or property manager or other agent of a landlord.

9 (6) **Postpaid service** -- A payment option offered by a REP for which the customer  
10 normally makes a payment for electric service after the service has been rendered.

11 (7) **Prepaid service** -- A payment option offered by a REP for which the customer  
12 normally makes a payment for electric service before service is rendered.

13 (8) **Prepaid disclosure statement (PDS)** -- A document described by subsection (e)  
14 of this section.

15 (9) **Summary of usage and payment (SUP)** -- A document described by subsection  
16 (h) of this section.

17  
18 (c) **Requirements for prepaid service.**

19 (1) A REP ~~shall~~must file with the commission a notice of its intent to provide prepaid  
20 service prior to offering such service. The notice of intent ~~shall~~must include a  
21 description of the type of CPDS the REP will use, and the initial Electricity Facts  
22 Label (EFL), Terms of Service (TOS), and PDS for the service. Except as provided

in subsection (m) of this section, a REP-controlled CPDS or TDU settlement provisioned meter is required for any prepaid service.

(2) A CPDS that relies on metering equipment other than the TDU meter ~~shall~~must conform to the requirements and standards of §25.121(e) of this title (relating to Meter Requirements), §25.122 of this title (relating to Meter Records), and section 4.7.3 of the tariff for retail electric delivery service, which is prescribed by §25.214 of this title (relating to Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities).

(3) A TDU may, consistent with its tariff, install CPDS equipment, including meter adapters and collars on or near the TDU's meters. Such installation does not constitute competitive energy services as this term is defined in §25.341(3) of this title (relating to Definitions).

(4) A CPDS ~~shall~~must not cause harmful interference with the operation of a TDU's meter or equipment, or the performance of any of the TDU's services. If a CPDS interferes with the TDU's meter or equipment, or TDU's services, the CPDS ~~shall~~must be promptly corrected or removed. A CPDS that relies on communications channels other than those established by the TDU ~~shall~~must protect customer information in accordance with §25.472 of this title (relating to Privacy of Customer Information).

(5) A REP may choose the means by which it communicates required information to a customer, including an in-home device at the customer's premises, United States Postal Service, email, telephone, mobile phone, or other electronic



1 communications. The means by which the REP will communicate required  
2 information to a customer ~~shall~~must be described in the TOS and the PDS.

3 (A) A REP ~~shall~~must communicate time-sensitive notifications required by  
4 paragraph (7)(B), (D), and (E) of this subsection by telephone, mobile  
5 phone, or electronic means.

6 (B) A REP ~~shall~~must, as required by the commission after reasonable notice,  
7 provide brief public service notices to its customers. The REP ~~shall~~must  
8 provide these public service notices to its customers by electronic  
9 communication, or by other acceptable mass communication methods, as  
10 approved by the commission.

11 (6) A REP ~~shall~~must calculate the customer's current balance by crediting the account  
12 for payments received and reducing the account balance by known charges and fees  
13 that have been incurred, including charges based on estimated usage as allowed in  
14 paragraph (11)(E) of this subsection.

15 (A) The REP may also reduce the account balance by:

16 (i) estimated applicable taxes; and

17 (ii) estimated TDU charges that have been incurred in serving the  
18 customer and that, pursuant to the TOS, will be passed through to  
19 the customer.

20 (B) If the customer's balance reflects estimated charges and taxes authorized by  
21 subparagraph (A) of this paragraph, the REP ~~shall~~must promptly reconcile  
22 the estimated charges and taxes with actual charges and taxes, and credit or

1 debit the balance accordingly within 72 hours after actual consumption data  
2 or a statement of charges from the TDU is available.

3 (C) A REP may reverse a payment for which there are insufficient funds  
4 available or that is otherwise rejected by a bank, credit card company, or  
5 other payor.

6 (D) If usage sent by the TDU is estimated or the REP estimates consumption  
7 according to paragraph (11)(E) of this subsection, the REP ~~shall~~must  
8 promptly reconcile the estimated consumption and associated charges with  
9 the actual consumption and associated charges within 72 hours after actual  
10 consumption data is available to the REP.

11 (7) A REP ~~shall~~must:

12 (A) on the request of the customer, provide the customer's current balance  
13 calculated pursuant to paragraph (6) of this subsection, including the date  
14 and time the current balance was calculated and the estimated time or days  
15 of paid electricity remaining; and

16 (B) make the current balance available to the customer either:

17 (i) continuously, via the internet, phone, or an in-home device; or

18 (ii) within two hours of the REP's receipt of a customer's balance  
19 request, by the means specified in the Terms of Service for making  
20 such a request.

21 (C) communicate to the customer the current price for electric service calculated  
22 as required by §25.475(g)(2)(A)-(E) of this title (relating to General Retail  
23 Electric Provider Requirements and Information Disclosures to Residential  
24 and Small Commercial Customers);

- 1 (D) provide a warning to the customer at least one day and not more than seven  
2 days before the customer's current balance is estimated by the REP to drop  
3 to the disconnection balance;
- 4 (E) provide a confirmation code when the customer makes a payment by credit  
5 card, debit card, or electronic check. A REP is not required to provide a  
6 confirmation code or receipt for payment sent by mail or electronic bill  
7 payment system. The REP ~~shall~~must provide a receipt showing the amount  
8 paid for payment in person. At the customer's request, the REP ~~shall~~must  
9 confirm all payments by providing to the customer the last four digits of the  
10 customer's account number or Electric Service Identifier (ESI ID), payment  
11 amount, and the date the payment was received;
- 12 (F) ensure that a CPDS controlled by the REP does not impair a customer's  
13 ability to choose a different REP or any electric service plans offered by the  
14 REP that do not require prepayment. When the REP receives notice that a  
15 customer has chosen a new REP, the REP ~~shall~~must take any steps  
16 necessary to facilitate the switch on a schedule that is consistent with the  
17 effective date stated on the Electric Reliability Council of Texas (ERCOT)  
18 enrollment transaction and ERCOT's rules for processing such transactions;  
19 and
- 20 (G) refund to the customer or an energy assistance agency, as applicable, any  
21 unexpended balance from the account within ten business days after the  
22 REP receives the final bill and final meter read from the TDU.

(i) In the case of unexpended funds provided by an energy assistance agency, the REP ~~shall~~must refund the funds to the energy assistance agency and identify the applicable customer and the customer's address associated with each refund.

(ii) In the case of unexpended funds provided by the customer that are less than five dollars, the REP ~~shall~~must communicate the unexpended balance to the customer and state that the customer may contact the REP to request a refund of the balance. Once the REP has received the request for refund from the customer, the REP ~~shall~~must refund the balance within ten business days.

(8) Nothing in this subsection limits a customer from obtaining a SUP.

(9) The communications provided under paragraph (7)(A)-(D) of this subsection and any confirmation of payment as described in paragraph (7)(E) of this subsection, except a receipt provided when the payment is made in person at a third-party payment location, ~~shall~~must be provided in English or Spanish, at the customer's election.

(10) A REP ~~shall~~must cooperate with energy assistance agencies to facilitate the provision of energy assistance payments to requesting customers.

(11) A REP ~~shall~~must not:

(A) tie the duration of an electric service contract to the duration of a tenant's lease;

(B) require, or enter into an agreement with a landlord requiring, that a tenant select the REP as a condition of a lease;

- (C) require a connection balance in excess of \$75 for a residential customer;
- (D) require security deposits for electric service; or
- (E) base charges on estimated usage, other than usage estimated by the TDU or estimated by the REP in a reasonable manner for a time period in which the TDU has not provided actual or estimated usage data on a web portal within the time prescribed by §25.130(g) of this title (relating to Advanced Metering) and in which the TDU-provided portal does not provide the REP the ability to obtain on-demand usage data.

(12) A REP providing service ~~shall~~must not charge a customer any fee for:

- (A) transitioning from a prepaid service to a postpaid service, but notwithstanding §25.478(c)(3) of this title (relating to Credit Requirements and Deposits), a REP may require the customer to pay a deposit for postpaid service consistent with §25.478(b) or (c)(1) and (2) of this title and may:
  - (i) require the deposit to be paid within ten days after issuance of a written disconnection notice that requests a deposit; or
  - (ii) bill the deposit to the customer.
- (B) the removal of equipment; or
- (C) the switching of a customer to another REP, or otherwise cancelling or discontinuing taking prepaid service for reasons other than nonpayment, but may charge and collect early termination fees pursuant to §25.475 of this title.

(13) If a customer owes a debt to the REP for electric service, the REP may reduce the customer's account balance by the amount of the debt. Before reducing the account

balance, the REP must notify the customer of the amount of the debt and that the customer's account balance will be reduced by the amount of the debt no sooner than 10 days after the notice required by this paragraph is issued.

(14) In addition to the connection balance, a REP may require payment of applicable TDU fees, if any, prior to establishing electric service or reconnecting electric service.

(15) A REP that provides prepaid service to a residential customer ~~shall~~must not charge an amount for electric service that is higher than the price charged by the POLR in the applicable TDU service territory. The price for prepaid service to a residential customer calculated as required by §25.475(g)(2)(A)-(E) of this title ~~shall~~must be equal to or lower than at least one of the tests described in subparagraphs (A)-(C) of this paragraph:

(A) The minimum POLR rate for the residential customer class at the 500 kilowatt-hour (kWh), 1,000 kWh, and 2,000 kWh usage levels as shown on the POLR EFL posted on the commission's website for the applicable TDU service territory. When an updated POLR EFL is posted on the commission's website, the REP, at the REP's option, may continue to reference the prior POLR EFL to ensure compliance with this paragraph for prepaid service prices charged during the first 30 days, beginning the date that the updated POLR EFL is posted.

(B) The maximum POLR rate for the residential customer class calculated pursuant to §25.43~~(4)~~(m) of this title (relating to Provider of Last Resort (POLR)).

(C) The average POLR rate for the residential customer class at the 500 kWh, 1,000 kWh, and 2,000 kWh usage levels using the formula described in §25.43~~(4)~~(m) of this title for the applicable TDU service territory, with the LSP energy charge calculated as the simple average of the RTSPPs over the prior month for the load zone located partially or wholly in the customer's TDU service territory that had the highest simple average price. For prepaid service prices charged by a REP up to and including the tenth business day of a month, the test may be met by using the average POLR rate calculation for the month preceding the prior month.

(D) For a fixed rate product, the REP must show that the prepaid service prices calculated under §25.475(g)(2)(A), (D)-(E) of this title are equal to or lower than one of the tests described in subparagraphs (A) and (C) of this paragraph at the time the REP makes the offer and provided that the customer accepts the offer within 30 days.

(d) **Customer acknowledgement.** As part of the enrollment process, a REP ~~shall~~must obtain the applicant's or customer's acknowledgement of the following statement: "The continuation of electric service depends on your prepaying for service on a timely basis and if your balance falls below {insert dollar amount of disconnection balance}, your service may be disconnected with little notice. Some electric assistance agencies may not provide assistance to customers that use prepaid service." The REP ~~shall~~must obtain this acknowledgement using any of the authorization methods specified in §25.474 of this title (relating to Selection of Retail Electric Provider).

- 1
- 2 (e) **Prepaid disclosure statement (PDS).** A REP ~~shall~~must provide a PDS
- 3 contemporaneously with the delivery of the contract documents to a customer pursuant to
- 4 §25.474 of this title and as required by subsection (f) of this section. A REP must also
- 5 provide a PDS—contemporaneously with any advertisement or other marketing materials
- 6 not addressed in subsection (f) of this section that include a specific price or cost for prepaid
- 7 service. The commission may adopt a form for a PDS. The PDS ~~shall~~must be a separate
- 8 document and ~~shall~~must be at a minimum written in 12-point font, and ~~shall~~must:
- 9 (1) provide the following statement: “The continuation of electric service depends on
- 10 you prepaying for service on a timely basis and if your current balance falls below
- 11 the disconnection balance, your service may be disconnected with little notice.”;
- 12 (2) inform the customer of the following:
- 13 (A) the connection balance that is required to initiate or reconnect electric
- 14 service;
- 15 (B) the acceptable forms of payment, the hours that payment can be made,
- 16 instructions on how to make payments, any requirement to verify payment
- 17 and any fees associated with making a payment;
- 18 (C) when service may be disconnected and the disconnection balance;
- 19 (D) that prepaid service is not available to critical care or chronic condition
- 20 residential customers as these terms are defined in §25.497 of this title
- 21 (relating to Critical Load Industrial Customers, Critical Load Public Safety
- 22 Customers, Critical Care Residential Customers and Chronic Condition
- 23 Residential Customers);



(E) the means by which the REP will communicate required information;

(F) the availability of deferred payment plans and, if a REP reserves the right to apply a switch-hold while the customer is subject to a deferred payment plan, that a switch-hold may apply until the customer satisfies the terms of the deferred payment plan, and that a switch-hold means the customer will not be able to buy electricity from other companies while the switch-hold is in place;

(G) the availability of energy bill payment assistance, including the disclosure that some electric assistance agencies may not provide assistance to customers that use prepaid service and the statement “If you qualify for low-income status or low-income assistance, have received energy assistance in the past, or you think you will be in need of energy assistance in the future, you should contact the billing assistance program to confirm that you can qualify for energy assistance if you need it.”; and

(H) an itemization of any non-recurring REP fees and charges that the customer may be charged.

(3) be prominently displayed in the property management office of any multi-tenant commercial or residential building at which the landlord is acting as an agent of the REP.

(f) **Marketing of prepaid services.**

(1) This paragraph applies to advertisements conveyed through print, television, radio, outdoor advertising, prerecorded telephonic messages, bill inserts, bill messages,

and electronic media other than Internet websites. If the advertisement includes a specific price or cost, the advertisement ~~shall~~must include in a manner that is clear and conspicuous to the intended audience:

(A) any non-recurring fees, and the total amount of those fees, that will be deducted from the connection balance to establish service;

(B) the following statement, if applicable: “Utility fees may also apply and may increase the total amount that you pay.”;

(C) the maximum fee per payment transaction that may be imposed by the REP; and

(D) the following statement: “You can obtain important standardized information that will allow you to compare this product with other offers. Contact (name, telephone number, and Internet address (if available) of the REP).” If the REP’s phone number or website address is already included on the advertisement, the REP need not repeat the phone number or website as part of this required statement. The REP ~~shall~~must provide the PDS and EFL to a person who requests standardized information for the product.

(2) This paragraph applies to all advertisements and marketing that include a specific price or cost conveyed through Internet websites, direct mail, mass e-mails, and any other media not addressed by paragraphs (1), (3), and (4) of this subsection. In addition to meeting the requirements of §25.474(d)(7) of this title, a REP ~~shall~~must include the PDS and EFL on Internet websites and in direct mail, mass e-mails, and any other media not addressed by paragraphs (1), (3), and (4) of this subsection.

For electronic communications, the PDS and EFL may be provided through a hyperlink.

(3) This paragraph applies to outbound telephonic solicitations initiated by the REP.

A REP ~~shall~~must disclose the following:

(A) information required by paragraph (1)(A)-(C) of this subsection;

(B) when service may be disconnected, the disconnection balance, and any non-TDU disconnection fees;

(C) the means by which the REP will communicate required information; and

(D) the following statement: “You have the right to review standardized documents before you sign up for this product.” The REP ~~shall~~must provide the PDS and EFL to a person who requests standardized information for the product.

(4) This paragraph applies to solicitations in person. In addition to meeting the requirements of §25.474(e)(8) of this title, before obtaining a signature from an applicant or customer who is being enrolled in prepaid service, a REP ~~shall~~must provide the applicant or customer a reasonable opportunity to read the PDS.

(g) **Landlord as customer of record.** A REP offering prepaid service to multiple tenants at a location may designate the landlord as the customer of record for the purpose of transactions with ERCOT and the TDU.

(1) For each ESI ID for which the REP chooses to designate the landlord as the customer of record, the REP ~~shall~~must provide to the TDU the name, service and

mailing addresses, and ESI ID, and keep that information updated as required in the TDU's Tariff for Retail Delivery Service.

- (2) The REP ~~shall~~must treat each end-use consumer as a customer for purposes of this subchapter, including §25.471 of this title (relating to General Provisions of Customer Protection Rules). Nothing in this subsection affects a REP's responsibility to provide customer billing contact information to ERCOT in the format required by ERCOT.

(h) **Summary of usage and payment (SUP).**

- (1) A REP ~~shall~~must provide a SUP to each customer upon the customer's request within three business days of receipt of the request. The SUP ~~shall~~must be delivered by an electronic means of communications that provides a downloadable and printable record of the SUP or, if the customer requests, by the United States Postal Service. If a customer requests a paper copy of the SUP, a REP may charge a fee for the SUP, which must be specified in the TOS and PDS provided to the customer. For purposes of the SUP, a billing cycle ~~shall~~must conform to a calendar month.

- (2) A SUP ~~shall~~must include the following information:

- (A) the certified name and address of the REP and the number of the license issued to the REP by the commission;
- (B) a toll-free telephone number, in bold-face type, that the customer can call during specified hours for questions and complaints to the REP about the SUP;

(C) the name, meter number, account number, ESI ID of the customer, and the service address of the customer;

(D) the dates and amounts of payments made during the period covered by the summary;

(E) a statement of the customer's consumption and charges by calendar month during the period covered by the summary;

(F) an itemization of non-recurring charges, including returned check fees and reconnection fees; and

(G) the average price for electric service for each calendar month included in the SUP. The average price for electric service ~~shall~~must reflect the total of all fixed and variable recurring charges, but not including state and local sales taxes, reimbursement for the state miscellaneous gross receipts tax, and any nonrecurring charges or credits, divided by the kilowatt-hour consumption, and ~~shall~~must be expressed as a cents per kilowatt-hour amount rounded to the nearest one-tenth of one cent.

(3) If a REP separately identifies a charge defined by one of the terms in this paragraph on the customer's SUP, then the term in this paragraph must be used to identify the charge, and such term and its definition ~~shall~~must be easily located on the REP's website and available to a customer free of charge upon request. Nothing in the paragraph precludes a REP from aggregating TDU or REP charges. For any TDU charge(s) listed in this paragraph, the amount billed by the REP ~~shall~~must not exceed the amount of the TDU charge(s). The label for any TDU charge(s) may also identify the TDU that issued the charge(s). A REP may use a different term

1 than a defined term by adding or deleting a suffix, adding the word “total” to a  
2 defined term, where appropriate, changing the use of lower-case or capital letters  
3 or punctuation, or using the acceptable abbreviation specified in this paragraph for  
4 a defined term. If an abbreviation other than the acceptable abbreviation is used  
5 for the term, then the term must also be identified on the customer’s SUP.

6 (A) Advanced metering charge -- A charge assessed to recover a TDU’s charges  
7 for Advanced Metering Systems, to the extent that they are not recovered in  
8 a TDU’s standard metering charge. Acceptable abbreviation: Advanced  
9 Meter.

10 (B) Competition Transition Charge -- A charge assessed to recover a TDU’s  
11 charges for nonsecuritized costs associated with the transition to  
12 competition. Acceptable abbreviation: Competition Transition.

13 (C) Energy Efficiency Cost Recovery Factor -- A charge assessed to recover a  
14 TDU’s costs for energy efficiency programs, to the extent that the TDU  
15 charge is a separate charge exclusively for that purpose that is approved by  
16 the Public Utility Commission. Acceptable abbreviation: Energy  
17 Efficiency.

18 (D) Late Payment Penalty -- A charge assessed for late payment in accordance  
19 with Public Utility Commission rules.

20 (E) Meter Charge -- A charge assessed to recover a TDU’s charges for metering  
21 a customer’s consumption, to the extent that the TDU charge is a separate  
22 charge exclusively for that purpose that is approved by the Public Utility  
23 Commission.

- (F) Miscellaneous Gross Receipts Tax Reimbursement -- A fee assessed to recover the miscellaneous gross receipts tax imposed on retail electric providers operating in an incorporated city or town having a population of more than 1,000. Acceptable abbreviation: Gross Receipts Reimb.
- (G) Nuclear Decommissioning Fee -- A charge assessed to recover a TDU's charges for decommissioning of nuclear generating sites. Acceptable abbreviation: Nuclear Decommission.
- (H) PUC Assessment -- A fee assessed to recover the statutory fee for administering the Public Utility Regulatory Act.
- (I) Sales tax -- Sales tax collected by authorized taxing authorities, such as the state, cities and special purpose districts.
- (J) TDU Delivery Charges -- The total amounts assessed by a TDU for the delivery of electricity to a customer over poles and wires and other TDU facilities not including discretionary charges.
- (K) Transmission Distribution Surcharges -- One or more TDU surcharge(s) on a customer's bill in any combination. Surcharges include charges billed as tariff riders by the TDU. Acceptable abbreviation: TDU Surcharges.
- (L) Transition Charge -- A charge assessed to recover a TDU's charges for securitized costs associated with the transition to competition.
- (4) If the REP includes any of the following terms in its SUP, the term ~~shall~~must be applied in a manner consistent with the definitions, and such term and its definition ~~shall~~must be easily located on the REP's website and available to a customer free of charge upon request:

(A) Base Charge -- A charge assessed during each billing cycle of service without regard to the customer's demand or energy consumption.

(B) Demand Charge -- A charge based on the rate at which electric energy is delivered to or by a system at a given instant, or averaged over a designated period during the billing cycle.

(C) Energy Charge -- A charge based on the electric energy (kWh) consumed.

(5) Unless a shorter time period is specifically requested by the customer, information provided ~~shall~~must be for the most recent 12 months, or the longest period available if the customer has taken prepaid service from the REP for less than 12 months.

(6) In accordance with §25.472(b)(1)(D) of this title, a REP ~~shall~~must provide a SUP to an energy assistance agency within one business day of receipt of the agency's request, and ~~shall~~must not charge the agency for the SUP.

(i) **Deferred payment plans.** A deferred payment plan for a customer taking prepaid service is an agreement between the REP and a customer that requires a customer to pay a negative current balance over time. A deferred payment plan may be established in person, by telephone, or online, but all deferred payment plans ~~shall~~must be confirmed in writing by the REP to the customer.

(1) The REP ~~shall~~must place a residential customer on a deferred payment plan, at the customer's request:

(A) when the customer's current balance reflects a negative balance of \$50 or more during an extreme weather emergency, as defined in §25.483(j)(1) of



1                   this title, if the customer makes the request within one business day after  
2                   the weather emergency has ended; or

3           (B)     during a state of disaster declared by the governor pursuant to Texas  
4                   Government Code §418.014 if the customer is in an area covered by the  
5                   declaration and the commission directs that deferred payment plans be  
6                   offered.

7           (2)     The REP ~~shall~~must offer a deferred payment plan to a residential customer who has  
8                   been underbilled by \$50 or more for reasons other than theft of service.

9           (3)     The REP may offer a deferred payment plan to a customer who has expressed an  
10                  inability to pay.

11          (4)     The deferred payment plan ~~shall~~must include both the negative current balance and  
12                  the connection balance.

13          (5)     The customer has the right to satisfy the deferred payment plan before the  
14                  prescribed time.

15          (6)     The REP may require that:

16           (A)     no more than 50% of each transaction amount be applied towards the  
17                  deferred payment plan; or

18           (B)     an initial payment of no greater than 50% of the amount due be made, with  
19                  the remainder of the deferred amount paid in installments. The REP  
20                  ~~shall~~must inform the customer of the right to pay the remaining deferred  
21                  balance by reducing the deferred balance by five equal monthly  
22                  installments. However, the customer can agree to fewer or more frequent

installments. The installments to repay the deferred balance ~~shall~~must be applied to the customer's account on a specified day of each month.

(7) The REP may initiate disconnection of service if the customer does not meet the terms of a deferred payment plan or if the customer's current balance falls below the disconnection balance, excluding the remaining deferred amount. However, the REP ~~shall~~must not initiate disconnection of service unless it has provided the customer at least one day's notice that the customer has not met the terms of the plan or, pursuant to subsection (c)(7)(D) of this section, a timely notice that the customer's current balance was estimated to fall below the disconnection balance, excluding the remaining deferred amount.

(8) The REP may apply a switch-hold while the customer is on a deferred payment plan.

(9) A copy of the deferred payment plan ~~shall~~must be provided to the customer.

(A) The plan ~~shall~~must include a statement, in clear and conspicuous type, that states, "If you have any questions regarding the terms of this agreement, or if the agreement was made by telephone and you believe this does not reflect your understanding of that agreement, contact (insert name and contact number of REP)."

(B) If a switch-hold will apply, the plan ~~shall~~must include a statement, in a clear and conspicuous type, that states "By entering into this agreement, you understand that {company name} will put a switch-hold on your account. A switch-hold means that you will not be able to buy electricity from other companies until you pay this past due amount. The switch-hold will be

removed after your final payment on this past due amount is processed.

While a switch-hold applies, if you are disconnected for not paying, you will need to pay {us or company name}, to get your electricity turned back on.”

(C) If the customer and the REP’s representative or agent meet in person, the representative ~~shall~~must read to the customer the statement in subparagraph (A) of this paragraph and, if applicable, the statement in subparagraph (B) of this paragraph.

(D) The plan may include a one-time penalty in accordance with §25.480(c) of this title, but ~~shall~~must not include a finance charge.

(E) The plan ~~shall~~must include the terms for payment of deferred amounts, consistent with paragraph (6) of this subsection.

(F) The plan ~~shall~~must state the total amount to be paid under the plan.

(G) The plan ~~shall~~must state that a customer’s electric service may be disconnected if the customer does not fulfill the terms of the deferred payment plan, or if the customer’s current balance falls below the disconnection balance, excluding the remaining deferred amount.

(10) The REP ~~shall~~must not charge the customer a fee for placing the customer on a deferred payment plan.

(11) The REP, through a standard market process, ~~shall~~must submit a request to remove the switch-hold, pursuant to §25.480(m)(2) of this title if the customer pays the deferred balance owed to the REP. On the day the REP submits the request to

1           remove the switch-hold, the REP ~~shall~~must notify the customer that the customer  
2           has satisfied the deferred payment plan and that the switch-hold is being removed.

3  
4   (j)   **Disconnection of service.** As provided by subsection (a)(4) of this section, §25.483  
5       (b)(2)(A) and (B), (d), (e)(1)-(6), and the definition of extreme weather in §25.483(j)(1) of  
6       this title apply to prepaid service. In addition to those provisions, this subsection applies  
7       to disconnection of a customer receiving prepaid service.

8       (1)   **Prohibition on disconnection.** A REP ~~shall~~must not initiate disconnection for a  
9       customer's failure to maintain a current balance above the disconnection balance  
10      on a weekend day or during any period during which the mechanisms used for  
11      payments specified in the customer's PDS are unavailable; or during an extreme  
12      weather emergency, as this term is defined in §25.483 of this title, in the county in  
13      which the service is provided.

14      (2)   **Initiation of disconnection.** A REP may initiate disconnection of service when  
15      the current balance falls below the disconnection balance, but only if the REP  
16      provided the customer a timely warning pursuant to subsection (c)(7)(D) of this  
17      section; or when a customer fails to comply with a deferred payment plan, but only  
18      if the REP provided the customer a timely warning pursuant to subsection (i)(7) of  
19      this section. A REP may initiate disconnection if the customer's current balance  
20      falls below the disconnection balance due to reversal of a payment found to have  
21      insufficient funds available or is otherwise rejected by a bank, credit card company,  
22      or other payor.

1           (3)     **Pledge from electric assistance agencies.** If a REP receives a pledge, letter of  
2           intent, purchase order, or other commitment from an energy assistance agency to  
3           make a payment for a customer, the REP ~~shall~~must immediately credit the  
4           customer's current balance with the amount of the pledge.

5           (A)     The REP ~~shall~~must not initiate disconnection of service if the pledge from  
6           the energy assistance agency (or energy assistance agencies) establishes a  
7           current balance above the customer's disconnection balance or, if the  
8           customer has been disconnected, ~~shall~~must request reconnection of service  
9           if the pledge from the energy assistance agency establishes a current balance  
10          for the customer that is at or above the customer's connection balance  
11          required for reconnection.

12          (B)     The REP may initiate disconnection of service if payment from the energy  
13          assistance agency is not received within 45 days of the REP's receipt of the  
14          commitment or if the payment is not sufficient to satisfy the customer's  
15          disconnection balance in the case of a currently energized customer, or the  
16          customer's connection balance if the customer has been disconnected for  
17          falling below the disconnection balance.

18          (4)     **Reconnection of service.** Within one hour of a customer establishing a connection  
19          balance or any otherwise satisfactory correction of the reasons for disconnection,  
20          the REP ~~shall~~must request that the TDU reconnect service or, if the REP  
21          disconnected service using its CPDS, reconnect service. The REP's payment  
22          mechanism may include a requirement that the customer verify the payment using  
23          a card, code, or other similar method in order to establish a connection balance or

current balance above the disconnection balance when payment is made to a third-party processor acting as an agent of the REP.

(k) **Service to Critical Care Residential Customers and Chronic Condition Residential Customers.** A REP ~~shall~~must not knowingly provide prepaid service to a customer who is a critical care residential customer or chronic condition residential customer as those terms are defined in §25.497 of this title. In addition, a REP ~~shall~~must not enroll an applicant who states that the applicant is a critical care residential customer or chronic condition residential customer.

(1) If the REP is notified by the TDU that a customer receiving prepaid service is designated as a critical care residential customer or chronic condition residential customer, the REP ~~shall~~must diligently work with the customer to promptly transition the customer to postpaid service or another REP in a manner that avoids a service disruption. The REP ~~shall~~must not charge the customer a fee for the transition, including an early termination or disconnection fee.

(2) If the customer is unresponsive, the REP ~~shall~~must transfer the customer to a competitively offered, month-to-month postpaid product at a rate no higher than the rate calculated pursuant to §25.43(1)(2)(A) of this title. The REP ~~shall~~must provide the customer notice that the customer has been transferred to a new product and ~~shall~~must provide the customer the new product's Terms of Service and Electricity Facts Label.

(l) **Compliance period.** No later than October 1, 2011, prepaid service offered by a REP pursuant to a new contract to a customer being served using a “settlement provisioned meter,” as that term is defined in Chapter 1 of the TDU’s tariff for retail delivery service, or using a REP-controlled collar or meter ~~shall~~must comply with this section. Before October 1, 2011, prepaid service offered by a REP to a customer served using a settlement provisioned meter or REP-controlled collar or meter ~~shall~~must comply with this section as it currently exists or as it existed in 2010, except as provided in subsection (m) of this section.

(m) **Transition of Financial Prepaid Service Customers.** A REP may continue to provide a financial prepaid service (*i.e.*, one that does not use a settlement provisioned meter or REP-controlled collar or meter) only to its customer that was receiving financial prepaid service at a particular location on October 1, 2011. A customer who is served by a financial prepaid service ~~shall~~must be transitioned to a service that complies with the other subsections of this section by the later of October 1, 2011 or sixty days after the customer begins to be served using either a settlement provisioned meter or a REP-controlled collar or meter. The customer ~~shall~~must be notified by the REP that the customer’s current prepaid service will no longer be offered as of a date specified by the REP by the later of either October 1, 2011 or sixty days after the customer begins to be served using either a settlement provisioned meter or REP-controlled collar or meter, as applicable. The REP ~~shall~~must provide the notification no sooner than 60 days and not less than 30 days prior to the termination of the customer’s current prepaid service. The customer ~~shall~~must be notified that the customer will be moved to a new prepaid service, and the REP ~~shall~~must transmit

1           an EFL and PDS to the customer with the notification, if the customer does not choose  
2           another service or REP.

3  
4  
5  
6



1 **§25.499. Acknowledgement of Risk Requirements for Certain Commercial Contracts.**

2 (a) **Purpose.** This section establishes requirements for the offering of wholesale indexed  
3 products and products containing separate assessment of ancillary services costs to a  
4 customer other than a residential or small commercial customer.

5 (b) **Application.** This section applies to all retail electric providers (REPs), aggregators and  
6 brokers. This section is effective for enrollments or re-enrollments entered into on or after  
7 September 1, 2021. REPs are not required to modify contract documents related to  
8 contracts or enrollments entered into before this date.

9 (c) **Definitions.** The definitions set forth in §25.5 (relating to Definitions) and §25.471(d)  
10 (relating to General Provisions of Customer Protection Rules) of this title apply to this  
11 section. In addition, wholesale indexed product, when used in this section, means a retail  
12 electric product in which the price a customer pays for electricity includes a direct pass-  
13 through of real-time settlement point prices determined by the independent organization  
14 certified under the Public Utility Regulatory Act (PURA) §39.151 for the ERCOT power  
15 region.

16 (d) **Acknowledgement of Risk (AOR).** Before a customer other than a residential or small  
17 commercial customer is enrolled in a wholesale indexed product, or a product that contains  
18 a separate assessment of ancillary service charges, an aggregator, broker, or REP must  
19 obtain an AOR, signed by the customer, verifying that the customer accepts the potential  
20 price risks associated with the product.

21 (1) For Wholesale Indexed Products, the AOR must include the following statement  
22 in clear, boldfaced text: “I understand that the volatility and fluctuation of

1           wholesale energy pricing may cause my energy bill to be multiple times higher in  
2           a month in which wholesale energy prices are high. I understand that I will be  
3           responsible for charges caused by fluctuations in wholesale energy prices.”

4           (2) For products that contain a separate assessment of ancillary service charges the  
5           AOR must include the following statement in clear, boldfaced text: “I understand  
6           that my energy bill may include a separate assessment of ancillary service charges,  
7           which may cause my energy bill to be multiple times higher in a month in which  
8           ancillary services charges are high. I understand that I will be responsible for  
9           charges caused by fluctuations in ancillary service charges.”

10          (3) An AOR may be included as an addendum to a contract.

11          (4) A REP, aggregator, or broker must retain a record of the AORs for each customer  
12          during the time the applicable plan is in effect and for four years after the contract  
13          ceases to be in effect for any customer. A REP must provide such documents at  
14          the request of the commission or its staff.

This agency certifies that the proposal has been reviewed by legal counsel and found to be within the agency’s legal authority to adopt.

ISSUED IN AUSTIN, TEXAS ON THE \_\_\_\_\_ DAY OF JULY 2021 BY THE  
PUBLIC UTILITY COMMISSION OF TEXAS  
ANDREA GONZALEZ